

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

SHAKEY'S PIZZA ASIA VENTURES, ) Case No. LA CV 24-04546-SB-  
INC., ) (AGRx)  
Plaintiff, )  
vs. ) Los Angeles, California  
PCJV USA, LLC, et al., ) Friday, June 27, 2025  
Defendants. ) (9:58 a.m. to 12:02 p.m.)

TRANSCRIPT OF VIDEO HEARING RE:  
NOTICE OF MOTION IN SUPPORT OF  
DEFENDANT PCJV USA, LLC.'S MOTION FOR SANCTIONS  
BEFORE THE HONORABLE JUDGE ALICIA G. ROSENBERG  
UNITED STATES MAGISTRATE JUDGE

Appearances: See next page.  
Court Reporter: Recorded; CourtSmart  
Courtroom Deputy: Isabel Martinez  
Transcribed by: Jordan Keilty  
Echo Reporting, Inc.  
9711 Cactus Street, Suite B  
Lakeside, California 92040  
(858) 453-7590

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transcript produced by transcription service.

1 APPEARANCES:

2 For the Plaintiff:

MICHAEL D. MURPHY, ESQ.  
MATTHEW R. FOLLETT, ESQ.  
Fox Rothschild, LLP  
10250 Constellation Boulevard  
Suite 900  
Los Angeles, California 90067  
(213) 213-1211

6 For the Defendants:

TODD M. MALYNN, ESQ.  
ARASH BERAL, ESQ.  
Blank Rome, LLP  
2029 Century Park East  
Sixth Floor  
Los Angeles, California 90067  
(424) 239-3400

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1 Los Angeles, California; Friday, June 27, 2025 9:58 a.m.

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3 (Call to Order)

4 THE CLERK: This United States District Court is  
5 once again in session, the Honorable Alicia G. Rosenberg,  
6 United States Magistrate Judge, presiding.

7 Calling Item Number 2, Case Number CV-24-4546-SB-  
8 AGR, Shakeys Pizza Asia Ventures, Incorporated versus PCJV  
9 USA, LLC, et al.

10 Counsel, can you please state your appearances for  
11 the record.

12 MR. MURPHY (via Zoom): Michael Murphy, here for  
13 the Plaintiff and Counterclaim Defendant and Third Party  
14 Defendants.

15 MR. MALYNN: Matthew --

16 THE COURT: We have more counsel, guys.

17 THE CLERK: Please state your name, Mr. Follett.

18 MR. FOLLETT (via Zoom): Matthew Follett with Fox  
19 Rothschild, on behalf of the same, Plaintiffs and --  
20 Plaintiffs, Counter-Defendants and Third Party Defendants.

21 THE COURT: All right. Thank you.

22 And now for the Defendants.

23 MR. MALYNN (via Zoom): Todd Malynn and Arash  
24 Beral on behalf of Defendants, Counter Claimants, and Third  
25 Party Plaintiffs.

1 THE COURT: All right. Okay. So, let me first  
2 begin by saying in terms of the Defendants' motion for  
3 sanctions, so, many of the requests for sanctions involve  
4 issues that would be dispositive of one or more claims. So,  
5 under those circumstances, the Magistrate Judge's role is to  
6 write a report and recommendation to the District Judge.  
7 The District Judge is the one who makes the ultimate  
8 decision. The Magistrate Judge, unless it's a consented  
9 case, which this is not, but the Magistrate Judge does not  
10 have authority to do that. So, I wanted to make sure people  
11 understood that I would be preparing a report and  
12 recommendation, particularly as to the request for sanctions  
13 that would be dispositive of one or more claims.

14 So, with that out of the way, I wanted to make  
15 sure that I had the status of the discovery correct. So,  
16 let -- I want to turn to that in terms -- and I'm talking  
17 about the document production. I think the papers are  
18 pretty clear. Well, the docket is clear about when the  
19 protective order is filed. The papers are clear about when  
20 the supplemental response to interrogatory Number 1 was  
21 served. So, I think the only issues that I want to address  
22 in terms of the status of the discovery is the document  
23 request. So, if you see me looking over to my left, it's  
24 because I'm looking over at my notes.

25 So, I'm going to go over this and make sure that

1 what I have is -- is what you have in terms of the document  
2 -- the documents that have been produced and the document  
3 requests covered by them.

4           So, I will first go through what I discerned from  
5 the record as having been produced. So, there was -- there  
6 were a series of requests. I think -- I have them down as  
7 Document Request 8, 14, and 19, which were narrowed by the  
8 Court in the March 12, 2025 order, but together call for the  
9 production of press releases, company statements, and I  
10 believe they were also SEC filings that were covered by  
11 these three.

12           It appeared to me, reading the Plaintiff's papers  
13 and the Defendants' papers, that these documents, the press  
14 releases, the SEC filings, and I don't know if that's  
15 different from company statements but probably not if this  
16 is an SEC case, that those documents had, in fact, been  
17 produced.

18           Starting with you, Mr. Murphy?

19           MR. MURPHY: Yes. And I -- I -- I go back to the  
20 order, and the order was about -- we talked at the hearing  
21 about -- sorry. We talked at the hearing about the -- the --  
22 this is a publicly traded company. So, statements are --  
23 are -- there's a -- has a -- it's a loaded term. This is  
24 not an SEC case.

25           THE COURT: Right.

1 MR. MURPHY: And, so, we agreed that it would be  
2 anything that was an official statement under the respective  
3 Securities Acts would be produced, and we have, yes.

4 THE COURT: All right. So, in your view, that  
5 production is complete?

6 MR. MURPHY: Yes. Yes.

7 THE COURT: Okay. Now, I -- before I ask the  
8 Defense on the same question, I just want to say I don't  
9 have a date on those. I was just going to use produced by  
10 -- by the date of your declaration.

11 MR. MURPHY: Yes.

12 THE COURT: Unless you have something else that  
13 you want me to use. But, otherwise, I would just use by the  
14 date of your --

15 MR. MURPHY: Okay.

16 THE COURT: -- declaration.

17 MR. MURPHY: Okay. May I say something in that  
18 regard then, your Honor?

19 THE COURT: Okay.

20 MR. MURPHY: Because, so, we have this complicated  
21 issue here in that the position taken by the Defendants is  
22 that after April 5th or April 15th, what the last day was,  
23 they didn't -- it was too late, right.

24 Now, I disagree with that, but I was -- you know,  
25 but I also noted that they had an obligation that your Honor

1 pointed out to produce documents, for example, that would  
2 have been responsive to their initial disclosures. And they  
3 did not. No documents were produced.

4 So, I felt -- I thought, you know, these guys are  
5 taking the position that discovery's over, so even if you  
6 have an obligation, the obligation is over, because they --

7 THE COURT: Well -- well, we'll get to Rule 26(e)  
8 and the --

9 MR. MURPHY: I know, but, so, it's --

10 THE COURT: -- but I don't want to --

11 MR. MURPHY: I know.

12 THE COURT: Right now I just want to get a  
13 sense --

14 MR. MURPHY: Here's --

15 THE COURT: -- what has been produced.

16 MR. MURPHY: Right, but my --

17 THE COURT: This is the first category.

18 MR. MURPHY: There's a point, though.

19 THE COURT: I believe you --

20 MR. MURPHY: There's a --

21 THE COURT: I -- I understand. I read the papers.  
22 I've read the papers. I have the arguments in mind.

23 MR. MURPHY: So, I just wanted --

24 THE COURT: What is not as clear -- and that's why  
25 I want to go through the record here -- is I want to make

1 sure that my notes from the record before the Court is the  
2 same as what you are thinking you have communicated to me in  
3 terms of the status of discovery. So, in the absence of any  
4 other information, I will use the date of your declaration.

5 So, now, turning to the Defense side, it seemed as  
6 though you agreed with the point that the press releases and  
7 the regulatory filings had been produced. Do I have that  
8 right?

9 MR. MALYNN: We received -- we received regulatory  
10 filings. I cannot sign off on press releases or company  
11 statements. But, yes, we did receive public filings.

12 THE COURT: Okay. All right.

13 MR. MALYNN: And I -- I have no --

14 THE COURT: And -- but the Plaintiff --

15 MR. MALYNN: -- idea how to judge completeness.

16 THE COURT: So, Mr. Murphy, you're saying there  
17 isn't anything that you are withholding in the press release  
18 category?

19 MR. MURPHY: Right. I'm not withholding anything.

20 THE COURT: Okay. All right. So, that's --  
21 that's that one.

22 Now let me -- hold on one second. Let me just  
23 look back at my notes. Next category I have was Document  
24 Request Number 9, which was the Board of Directors minutes  
25 and if there were --



1 MR. MURPHY: We --

2 THE COURT: -- any resolutions having to do with  
3 the acquisition of the Potato Corner assets.

4 MR. MURPHY: If --

5 THE COURT: Mr. Murphy, you --

6 MR. MURPHY: -- if it refers --

7 THE COURT: -- stated that -- somewhere in here  
8 that you had produced the Board of Directors minutes.

9 MR. MURPHY: So --

10 THE COURT: Is that correct?

11 MR. MURPHY: It -- so, our limitation was this.  
12 We -- and this was in the hearing -- that these -- all these  
13 categories were to be confined by to the extent it refers to  
14 PCJV and the U.S. rights.

15 THE COURT: Right.

16 MR. MURPHY: And there aren't any.

17 MR. MALYNN: Hold on. Your Honor, you said if it  
18 was -- it was international --

19 THE COURT: It was -- right. If it -- if it  
20 applies to an area solely -- that does not include the  
21 United States, does that change the Board of Directors  
22 minutes?

23 MR. MURPHY: So, I -- I -- my notes are that if --  
24 that -- so, the demand -- 1 through 18 was for all the deal  
25 documents, and I had taken the position and still do that

1 there's no -- the -- that's not proportional. It's not an  
2 issue. It's not debatable.

3 THE COURT: Right, right, right. No, no, No.

4 (Simultaneous speaking.)

5 THE COURT: This is -- again, I'm --

6 MR. MURPHY: So, when you said, can we negotiate  
7 and I said, Okay. So, why don't we talk about to the extent  
8 they mention PCJV or -- or specifically U.S. rights unique  
9 as to everyone else, and I said, I think I can do that.

10 THE COURT: All right. But in your declaration,  
11 you mentioned that the Board of Directors minutes had been  
12 produced. What are the -- if it's not about the Potato  
13 Corner assets, then what is it about? What -- what were the  
14 Board of Directors minutes about?

15 MR. MURPHY: So, to the extent an SEC filing  
16 refers to or contains board resolutions, we have to produce  
17 them. But there is nothing else that is specific to Potato  
18 Corner that the Board of Directors discussed.

19 THE COURT: There's nothing -- okay. Just making  
20 sure I got that. There's nothing -- you're saying there's  
21 nothing responsive in the Board of Directors minutes about  
22 the acquisition of Potato Corner assets?

23 MR. MURPHY: Correct. It's -- there's no -- this  
24 wasn't a topic of conversation. So, it wasn't really like,  
25 What are we going to do about the U.S.? And that's -- so,

1 that's a separate privilege issue that's complicating all of  
2 it. So --

3 MR. MALYNN: That wasn't the scope. The scope was  
4 he could carve out non-U.S. But we are entitled to get the  
5 deal.

6 THE COURT: No, no, no. I -- we're not at the  
7 deal yet. We're just at the Board of Directors --

8 MR. MALYNN: No, but the board minutes --

9 THE COURT: -- minutes --

10 MR. MALYNN: -- approving the deal is the deal.  
11 The board minutes discussing --

12 THE COURT: Okay. I want to kind of distinguish  
13 this because there are specific document requests about  
14 that, for example, the asset purchase agreement. So, I  
15 don't want to mix this up. I -- I want to get a clear  
16 picture, and you -- you can see through hearing why this has  
17 been difficult for me to get from the documents themselves,  
18 but so I want to make sure we're really clear about --

19 MR. MALYNN: I -- I appreciate that --

20 THE COURT: -- that. Back --

21 MR. MALYNN: -- your Honor.

22 THE COURT: -- to you, Mr. Murphy. The board --  
23 when you say there's nothing responsive in the Board of  
24 Directors minutes about the acquisition of Potato Corner  
25 assets, are we talking about the acquisition of Potato

1 Corner assets generally or just in the United States?

2 MR. MURPHY: I have to tell you I'm going to --  
3 here's my problem. I very specifically remember the  
4 limitation during the informal conference about things that  
5 refer or are specific to the U.S. or trademark rights  
6 generally that would affect the U.S. That was my  
7 understanding. Those don't exist.

8 Now, there were board minutes and -- or references  
9 to board minutes in the SEC filings, which we have produced.  
10 So -- so, yes, there have been board minutes produced, but  
11 there aren't any that fall within that category. The board  
12 didn't have a discussion, for example, about PCJV and bad  
13 corn. It didn't happen.

14 THE COURT: Or, for example, when you're talking  
15 about the acquisition of trademark rights in the Potato  
16 Corner marks, did the -- do you recall Board of Directors  
17 minutes addressing that subject?

18 MR. MURPHY: No. There -- I -- no, there was not,  
19 because that wasn't their charge, no. This is --

20 THE COURT: Okay. So, then I will say it -- at  
21 this point it seems as though nothing but you would need to  
22 confirm.

23 UNIDENTIFIED SPEAKER: Your Honor, can I chime in  
24 on this point?

25 THE COURT: Okay.

1 UNIDENTIFIED SPEAKER: The obligation then is to  
2 tell us on April 4th what -- by April 4th that -- or at  
3 least by April 11th where they don't have responsive  
4 documents based upon your guidance on March 12th. To be  
5 told on June --

6 THE COURT: I want to get --

7 UNIDENTIFIED SPEAKER: -- 27th --

8 THE COURT: Can we just postpone this, because I  
9 really --

10 UNIDENTIFIED SPEAKER: Yes, your Honor.

11 THE COURT: -- you know, I need to get through  
12 where the --

13 UNIDENTIFIED SPEAKER: Yes, your Honor.

14 THE COURT: -- discovery is. And because the  
15 counsel and the papers don't focus on that, that -- all the  
16 arguments are there, but the predicate facts are hard to  
17 glean. So, I've got to get through the predicate facts  
18 because I'm the one, as I said, to prepare a report and  
19 recommendation. So, I have to be able to describe this, and  
20 right now I'm -- I'm not sure what I'm describing.

21 So, that was Document Request --

22 MR. MURPHY: Well, because I'm --

23 THE COURT: -- Number 9 --

24 (Simultaneous speaking.)

25 MR. MURPHY: On March 12th, you said the important

1 point of the opposition was to do what we're doing right  
2 now. They didn't do that in their opposition. They didn't  
3 show --

4 THE COURT: I -- I --

5 MR. MURPHY: -- substantial --

6 THE COURT: Okay. Can't --

7 MR. MURPHY: Okay. Yes, yes, your Honor. I --

8 I'll --

9 THE COURT: This is going to take four -- okay.  
10 I'm just telling you now my afternoon calendar starts at  
11 2:00 p.m. In order for us to get through this hearing,  
12 you're going to have to let me get through my notes here of  
13 what I need to ask. If we stop and have an argument at  
14 every single point in time -- well, maybe we won't need  
15 argument at the end, but I'm still --

16 UNIDENTIFIED SPEAKER: Thank you, your Honor. I  
17 hear you.

18 THE COURT: -- stuck trying to go through this.  
19 Okay.

20 So, that first category was 8, 14, and 19. For  
21 anyone else keeping track, the Board of Directors minutes,  
22 according to my notes, are Document Request Number 9.

23 We now move to Document Request Numbers 12 and 25,  
24 and this was where -- this is -- these two, I put them  
25 together. They're about the financials.

1 Now, Mr. Murphy, again, starting with you, you  
2 mentioned in your declaration that you have produced  
3 financial statements.

4 MR. MURPHY: I -- I -- oh, yes. Yes, I did, yes.

5 THE COURT: Okay. So, then I want to go through  
6 12 and 25 just to make sure that I understand which request  
7 those would be responsive to and, you know, maybe both of  
8 them. But one of them -- so, 25, that may be the easiest  
9 one. Twenty-five had to do with financials in support of  
10 your damages claims. Are those the financial statements  
11 that you're talking about that you have produced?

12 MR. MURPHY: No, I haven't -- they were produced  
13 by my opponents at -- in the -- in the expert --

14 THE COURT: No, no, no. I'm not talking about the  
15 Defendants' production. I'm talking about the Plaintiff's  
16 production.

17 MR. MURPHY: At the time, I didn't have any  
18 because that should have -- I didn't have any because I  
19 needed their financials of the subsidiaries of PCJV other  
20 than the PCJV public filings that we all have, but it's --  
21 that's -- that's for the damages.

22 THE COURT: Okay. So, in terms of the financials  
23 that would support Plaintiff's claims for damages, has that  
24 been produced as of this moment?

25 MR. MURPHY: Everyone has them, yes.

1 THE COURT: Okay. But --

2 MR. MALYNN: They did not produce any financials,  
3 your Honor. He's relying upon our -- the financials that we  
4 produced.

5 THE COURT: Well, he could rely on that if that's  
6 what is supporting the Plaintiff's damage claim. Is --

7 MR. MALYNN: I'm just --

8 THE COURT: -- that what you're saying?

9 MR. MALYNN: -- bringing -- the answer to your  
10 question.

11 THE COURT: No, the --

12 MR. MALYNN: I don't --

13 THE COURT: Okay. I don't know that you can have  
14 personal knowledge to answer the question. So, I have to  
15 get this from Mr. Murphy because this is Plaintiff's damages  
16 claim.

17 So, I need to know when you say you produced  
18 financials, Document Request Number 25 asks for the  
19 financials underlying the Plaintiff's claims for damages.

20 MR. MURPHY: Correct. So, here's --

21 THE COURT: Okay. So, then that's my question.  
22 Have those financials been produced in support of your  
23 client's claims for damages?

24 MR. MURPHY: Yes, but, so, I just want to make  
25 sure we understand the law. So -- that wasn't meant to be



1 insulting. But just so we're clear on the law on damages  
2 here, I have multiple options at trial. I could do lost  
3 profits. All of our financials are in the SEC filings.  
4 Okay. That's why we produced those. They're very  
5 important.

6 Then I also can do disgorgement. Disgorgement  
7 requires the -- the -- my opponents -- Plaintiffs -- at the  
8 time, I had not taken -- or at the time of the -- the last  
9 date of the -- as of the declaration -- let me back up.

10 THE COURT: Okay.

11 MR. MURPHY: I didn't have possession of their  
12 financials until they produced Jason Engels (phonetic)  
13 documents at his expert deposition on April 11th. At that  
14 point, I did have them. So, did I print -- put Bates  
15 numbers on them and -- and send them back? No, I did not.

16 THE COURT: Okay. So, the disgorgement claim --  
17 what you're saying is the disgorgement claim is based up the  
18 Defendants' documents?

19 MR. MURPHY: Right.

20 THE COURT: All right. And then, to the extent  
21 you are claiming lost profits, if you do decide to claim  
22 them, you are relying upon the financials in the SEC  
23 filings?

24 MR. MURPHY: Yes.

25 THE COURT: Okay. Now, let's go to Document

1 Request Number 12 is a different request. It's for the  
2 financials, if there are any, regarding the acquisition of  
3 Potato Corner assets.

4 MR. MURPHY: So, we had a limitation because we  
5 guard these zealously. And I would have fought for a motion  
6 if I thought that I was going to be in this situation because  
7 I don't think there's any reasonable particularity there.  
8 However, we have a specific limitation that it was to the  
9 extent they mentioned, specific -- the trademarks rights or  
10 PCJV and -- and -- so, those are in the SEC reports. I  
11 mean, there's a -- there's a -- we produced, you know,  
12 financials that say this is how much the acquisition was  
13 worth. This is how much we value the goodwill. This is how  
14 much we value -- so, now --

15 THE COURT: Right.

16 MR. MURPHY: -- yeah --

17 THE COURT: But then is there anything that caught  
18 -- that identifies valuation in the United States separate  
19 and apart from the overall deal?

20 MR. MURPHY: No, because that's not how these  
21 deals work, nor does, you know, valuation because --

22 THE COURT: Okay. But, regardless of why, the  
23 answer is no?

24 MR. MURPHY: The answer is no.

25 THE COURT: So, the SEC filings have identified

1 the overall valuation, but you're saying there is nothing  
2 responsive about the U.S. separately?

3 MR. MURPHY: Correct. That's correct.

4 THE COURT: Okay. Got it. All right. Let me  
5 see. I think there was one other -- no. There were a  
6 couple more. Okay.

7 Document Request Number 13 called for the Potato  
8 Corner trademark assignments and transfers. Plaintiff cited  
9 to Document -- Docket Entry 44-10 through 44-15, which is  
10 part of the motion. For those of you who've not memorized  
11 the docket entries, part of the motion for preliminary  
12 injunction.

13 You also attached two documents. I didn't check  
14 to see whether they are duplicative, but I guess my question  
15 to you is are there any trademark assignments or transfers  
16 that you have not produced?

17 MR. MURPHY: That -- that would be applicable to  
18 the U.S.? No.

19 THE COURT: Yes.

20 MR. MURPHY: No.

21 THE COURT: So, that has been completed. Again,  
22 for all that are keeping track, that's Document Request 13,  
23 and you're telling me that that was completed.

24 Okay. All right. Let me go back to my notes.  
25 Give me a moment.

1 (Pause.)

2 THE COURT: All right. So, now let's go to  
3 Document Request Number 1 which called for the production of  
4 the agreement that covered the sale of Potato Corner assets  
5 to Spavi.

6 Now, I had said that Plaintiff could produce a  
7 redacted copy. What I have is Plaintiff's proposal of April  
8 11 to produce the entire agreement for the inspection of the  
9 Defendants.

10 Has anything happened since then? So, let me be  
11 specific about that. Mr. Murphy, did you go ahead and  
12 produce a redacted copy of the asset purchase agreement?

13 MR. MURPHY: So, again, we have a limitation, and  
14 the limitation was specific to the U.S. and PCJV and that --  
15 that has a -- a trademark related agreement that would be --  
16 that would implicate the U.S. separately (indiscernible).  
17 Now, that was my understanding. I would have produced a  
18 blacked-out agreement. Honestly, there's -- there -- and  
19 that's why I -- I proposed this, because I thought I --  
20 there -- nothing is going to make my opponents angrier than  
21 sending them a very --

22 THE COURT: A blank piece of paper.

23 (Simultaneous speaker.)

24 MR. MURPHY: -- it's going to make them mad. So,  
25 why don't we do this? Now, I understand now as of the

1 filing of their motion that they -- they rejected it. But  
2 come on, guys. You got to -- I mean, this is part of my  
3 meet and confer problem. Like, I'm trying -- I actually was  
4 trying to help them and help their legal theory because  
5 they're going to see that there's nothing there, and under  
6 the law, the deed supersedes the agreement. It doesn't  
7 matter what it says. There's a deed, and they have it.  
8 It's in the record in this case.

9 THE COURT: All right. Okay. So, then let me  
10 just make sure on the Defense side that what Plaintiff  
11 represented is the case, that the last word on this subject  
12 was the April 11 proposal and that nothing has occurred  
13 since then?

14 MR. MALYNN: We disagree, your Honor. We wanted  
15 that doc -- we wanted anything he was going to produce. I'm  
16 happy to show the jury a blacked-out document. That is not  
17 accurate. They just didn't produce it, and we get the  
18 opportunity to show witnesses on the stand whatever doc --  
19 what ever the purchase agreement is and that was being  
20 withheld from us. Just because their point of view of -- of  
21 what is relevant and what is not relevant, we have a -- you  
22 know we have a disagreement on what is relevant, and --

23 THE COURT: Correct.

24 MR. MALYNN: -- they can't unilaterally decide not  
25 to comply with your order.

1 THE COURT: But my -- so, my point is that since  
2 the April 11 proposal, nothing has happened on Document  
3 Request Number 1. Is that correct?

4 MR. MALYNN: That is correct. They did not comply  
5 with your order. We asked them to comply.

6 THE COURT: Okay. So, let me just make a note.

7 (Pause.)

8 THE COURT: Okay. Now, that leaves us with the  
9 largest group. So, this is the one where, Mr. Murphy, you  
10 are describing the application of the search terms returned  
11 over 40,000 unique documents.

12 Now, I have specific questions. Let me make sure  
13 I have my notes.

14 (Pause.)

15 THE COURT: Very frustrating. I have too many  
16 pieces of paper lying around here. Yeah. Okay. The 40,000  
17 unique documents, now, there is a difference -- are these  
18 40,000 unique pages of documents or are these unique  
19 documents? In other words, one document could be 50 pages?

20 (Pause.)

21 THE COURT: I -- you're muted. So, I can't hear  
22 you.

23 MR. MURPHY: Forty thousand pages -- I'm sorry --  
24 40,000 documents, not pages.

25 THE COURT: Not pages. Okay. So, we have 40,000

1 -- over 40,000 unique documents, not pages. Okay. So, it  
2 could be that the number of pages is more unless every --

3 MR. MURPHY: Correct.

4 THE COURT: -- single document is one page, which  
5 is highly unlikely.

6 All right. Now, you mentioned that you did some  
7 of the review -- I'm going to forget the name of -- I'm  
8 sorry. I'm having a --

9 MR. MURPHY: Oh, my colleague, Jordan  
10 Zollicoffer, did some of the reviews also.

11 THE COURT: Yes, that's it. Thank you.

12 All right. Did you have anyone else involved in  
13 that review?

14 MR. MURPHY: I -- I -- I don't have the budget for  
15 -- to staff --

16 THE COURT: To do that, right.

17 MR. MURPHY: You know, I --

18 (Simultaneous speaking.)

19 THE COURT: But there's you. There's -- there's  
20 Mr. Zollicoffer. Did you have any --

21 MR. MURPHY: That's \$1500 an hour.

22 THE COURT: -- people helping you?

23 MR. MURPHY: No. I'm -- I don't -- we don't allow  
24 legal assistants to do review like that because here's the  
25 problem --

1 THE COURT: You have attorney-client privilege.

2 MR. MURPHY: Yes.

3 THE COURT: I -- I get that.

4 MR. MURPHY: And --

5 THE COURT: So, in terms of the attorney-client  
6 privilege, it was you and Mr. Zolliecoffer --

7 MR. MURPHY: Ms. Zolliecoffer, yes.

8 THE COURT: Anyone else? I have the wrong -- I'm  
9 sorry. I really apologize if I have the wrong name.

10 MR. MURPHY: That's okay.

11 THE COURT: I didn't write it down, and I should  
12 have because I would mispronounce it. So, my apologies to  
13 your -- your colleague.

14 Any -- anyone else that you can think of that was  
15 involved in this, an attorney?

16 MR. MURPHY: No, no, I did not have another  
17 attorney involved.

18 THE COURT: Okay.

19 MR. MURPHY: Oh, actually, my -- the general  
20 counsel of my counsel, yes.

21 THE COURT: Okay. General --

22 MR. MURPHY: There was --

23 THE COURT: And -- and the general counsel. All  
24 right.

25 MR. MURPHY: And --



1 THE COURT: You --

2 MR. MURPHY: General counsel's office, yes.

3 THE COURT: Or general counsel's office, but you  
4 -- you're saying it's one attorney?

5 MR. MURPHY: No. There are -- they've got, I  
6 don't know, 10 attorneys, yeah.

7 THE COURT: Okay.

8 MR. MURPHY: So --

9 THE COURT: Okay. So, can we refer to the general  
10 counsel's office --

11 MR. MURPHY: Yeah, yeah. Yeah, yeah.

12 THE COURT: -- however -- okay. Thank you. They  
13 were involved in the review. Okay.

14 All right. So, then, the issue I guess the --  
15 that you raised -- Mr. Murphy, the issue that you raised in  
16 your declaration is that given what the search terms  
17 produced, namely, over 40,000 hits of documents, not just  
18 pages but documents, that it was impossible to comply with  
19 the order that I issued.

20 MR. MURPHY: It --

21 THE COURT: Are there any -- so, I've gone through  
22 the documents versus pages. I've gone through the number of  
23 attorneys. Is there anything else that you would like to  
24 add that I have not thought to ask?

25 MR. MURPHY: Yes. The -- on -- when was it? On

1 April -- I'm sorry -- March 24th, you said they were  
2 entitled to -- on March 24th, I sent an email, said we tried  
3 to meet and confer with you. And this is Document 173-10,  
4 and I'm on page nine, my email. I said:

5 "I tried to meet and confer with  
6 you on search terms which are better  
7 decided now. You refuse. I asked for a  
8 courtesy for -- time for other separate  
9 responses so I could get this  
10 production. You refused. And this  
11 forced me to drop everything and work on  
12 this. Right. At a certain point the  
13 refusal by you -- by your side to extend  
14 any courtesies whatsoever is beginning  
15 to look like a substantive strategy. We  
16 will begin producing this week. I'm  
17 sorry how you've decided --  
18 You know, so, there's -- I don't  
19 (indiscernible) --

20 THE COURT: Right.

21 MR. MURPHY: But --

22 THE COURT: So, you're now --

23 MR. MURPHY: -- I was trying --

24 THE COURT: -- transitioning --

25 MR. MURPHY: -- to talk to them.

1 THE COURT: You are now transitioning to my next  
2 set of questions.

3 MR. MURPHY: Yes. How can I -- I -- it's a  
4 complete -- right out of the gate, I realized as I was  
5 walking out -- this was -- I realized as I'm walking -- not  
6 walking out, but we turned off Zoom on March 12th, but I  
7 didn't even have my client here. So, I don't really know  
8 what this is going to entail. So, because it's nighttime in  
9 Manilla, I had to call, and that was why like within a short  
10 amount of time I called them -- or I sent an email to Mr.  
11 Malynn, and I explained that we need to meet and confer on  
12 these search terms now, and he wouldn't. So, we went ahead.  
13 And then we get this dump, and it's just, no, it's  
14 privileged, and it's all this highly confidential stuff, and  
15 we've got (indiscernible) privileges. So, I didn't know  
16 what to do. So, I just started reviewing.

17 So, Jordan, me, and the general counsel's office  
18 -- and it was not -- I was just wanting to get it done. Had  
19 they met and conferred --

20 THE COURT: Right. No, next time --

21 UNIDENTIFIED SPEAKER: Your Honor --

22 THE COURT: This is just for the future, when you  
23 are in that kind of situation, might I suggest if you end up  
24 with a Magistrate Judge who has procedures similar to mine,  
25 that you contact the clerk and the other side and ask for a

1 discovery conference to address what you are faced with,  
2 because this happens. People -- I mean, it's probably  
3 unusual. I haven't seen one case yet where the first set of  
4 search terms actually works. It's usually over-inclusive.  
5 Sometimes it's under-inclusive. But that's less common.  
6 More common is what you're describing, which is the first  
7 set of search terms produces a large number of hits, and  
8 then counsel usually work together to try and reduce it, et  
9 cetera, et cetera, et cetera.

10 So, that's just for the future. Now let's get  
11 back to this case.

12 So, your transition --

13 MR. MALYNN: Your Honor, can --

14 THE COURT: -- to my next question -- hold on.

15 Not yet because I got to get through my list. I've got to  
16 get through --

17 MR. MALYNN: You heard a --

18 (Simultaneous speaking.)

19 THE COURT: -- document request no matter what.

20 MR. MALYNN: I'll stick a pin --

21 THE COURT: I mean, I am on a mission --

22 MR. MALYNN: I'll stick a pin in it.

23 THE COURT: -- here to finish my questions. And  
24 then I will --

25 MR. MALYNN: I'll stick a pin in it.

1 THE COURT: -- open the floor. I promise you, but  
2 I've got to get through this, and we're almost there,  
3 because this last category is the search terms, and it's  
4 actually -- I divided it -- for those of you keeping track,  
5 I divided it into different groups of documents.

6 So, let me see how many groups. I think I put  
7 them into four groups. One was the transaction itself,  
8 which is Document Request Numbers 2 through 7 and Number 20.  
9 I then put in a category of 10, 11, 17, and 18, which are  
10 facially overbroad, but I -- I took a stab at it anyway at  
11 the discovery conference.

12 Document Request 21, which is the communications  
13 between Plaintiff and Potato Corner Franchisees other than  
14 PCJV, and then Document Request Numbers 22, 24, 26, and 27,  
15 which broadly deal with the trade secret allegations.

16 So, these are the document requests that are  
17 encompassed by the search term problem. Okay. So, now what  
18 I need to find out or at least confirm, according to what is  
19 in Mr. Murphy's declaration -- that's why I bring this up.  
20 Correct me if I'm wrong -- Mr. Murphy, did you actually make  
21 production of any of the documents in the -- what I will  
22 call the search term category? Because it sounds as though  
23 in your declaration you might have. I just -- I cannot be  
24 clear. I'm not clear about that.

25 MR. MURPHY: Yes.

1 THE COURT: Okay. So, can you tell me if you  
2 started the review of the 40,000 plus unique documents, how  
3 far you have gotten?

4 MR. MURPHY: Well, it's slow going right now  
5 because everything's confused, right. So --

6 THE COURT: Yes. Everything is confused, but --

7 MR. MURPHY: -- I -- and, so, I --

8 THE COURT: -- in terms of --

9 MR. MURPHY: I will -- I will tell you this. I  
10 will tell you this.

11 THE COURT: Okay.

12 MR. MURPHY: Jordan Zolliecoffer is still  
13 reviewing them, and we have a big problem. I need to -- one  
14 of the reasons why I wanted to meet and confer with them is  
15 we have a joint defense problem, and I need to meet and  
16 confer with them as to the -- as to dates, right, because  
17 here's the issue. My prior firm has most of the documents  
18 that I would identify as non-cover -- non-covered by a joint  
19 defense privilege. And I've actually asked four times --  
20 I'm actually legitimately trying to get these documents from  
21 them, and I keep getting PFC files that are -- that don't  
22 have anything.

23 And, so -- so, these are like just issues that  
24 happened, right. So --

25 THE COURT: Okay. So, with the former -- when you

1 say former counsel, you mean your former --

2 MR. MURPHY: My former firm.

3 THE COURT: -- law firm?

4 MR. MURPHY: I moved on February 21st, in the  
5 middle of all of this.

6 THE COURT: Okay. So, what you're trying to get  
7 from your former law firm is what?

8 MR. MURPHY: I'm trying to get those  
9 communications -- well, actually, I'm trying to get all --  
10 like the entire -- my entire email out -- inbox and outbox.  
11 And -- and part of that -- so, we have -- there's a  
12 complicated -- for the clients --

13 THE COURT: Yes.

14 MR. MURPHY: -- that do come with me, you've got  
15 -- you have to have authorizations. Not all of them came  
16 with me. So, it's very complicated. And the -- they don't  
17 have the resources to go through my entire email inbox --  
18 it's giant -- and pull those things out. And, so, I -- I  
19 have -- I have -- I just don't have a lot in my possession,  
20 and I'm working on it. So, you know, in a normal discovery,  
21 you know, June 27th, we wouldn't be crammed up against  
22 trial, and I could actually have, you know, engaged in this  
23 more, maybe even go to their offices, but I'm also doing,  
24 you know -- you know, exhibit lists and all that kind of  
25 stuff. So --

1 THE COURT: Right. Okay. So, I mean, I don't  
2 know what we can do in terms of third party --

3 MR. MALYNN: Your Honor, we have not --

4 THE COURT: -- you know, client.

5 MR. MALYNN: -- received --

6 THE COURT: I don't think they are likely to make  
7 that kind of authorization, but so we have the issue of the  
8 former law -- law firm and what it may have. You may --

9 UNIDENTIFIED SPEAKER: What's in my possession.

10 THE COURT: -- your colleague is -- is continuing  
11 to review the documents. Can you give us an idea -- you  
12 know, obviously I'm not going to ask you to describe what it  
13 is you have produced, but are you, you know, a quarter of  
14 the way through, halfway through?

15 MR. MURPHY: I don't know. I'd have to ask  
16 Jordan. It is much slower, I will tell you, once -- you  
17 know, the motion got filed.

18 I do know that like a week ago we had a meeting  
19 about it, whatever. So, I know it's ongoing, but --

20 THE COURT: Okay. But you don't have a percent --  
21 you can't give the Court an idea of how far along you are?

22 MR. MURPHY: No, I cannot.

23 THE COURT: Do you have any dates of --

24 MR. MALYNN: Your Honor --

25 THE COURT: -- production -- I'm sorry. One more.



1 Do you have any approximate dates of production that you  
2 have made of these documents after April 11?

3 MR. MURPHY: I don't -- I'm not -- I wish I was  
4 prepared to talk about that. I -- I'm writing an email to  
5 Jordan right now to see if I can get dates.

6 THE COURT: Okay. If you wouldn't mind  
7 interrupting him and see if we can get an idea of the dates  
8 of production and if he knows, you know, maybe how much  
9 there is left to go in terms of the review.

10 Okay.

11 MR. MALYNN: Your Honor, I need to make two  
12 points. I really need to make two points that clarify  
13 things that you have said and -- and Mr. Murphy has said.

14 And, first, he filed a declaration with the Court  
15 saying his transition -- substitution of counsel would not  
16 delay this case, and now we're hearing that his sub -- his  
17 moving firms, contrary to his declaration with the Court, is  
18 causing delay.

19 Second, this search term negotiation, you heard  
20 half a loaf. And what's very important here he told me that  
21 he is not using the actual document request as search terms.  
22 He told me point blank in our discussion to have a  
23 discussion about search terms that he will not use our  
24 document request as search terms, and I said, Then what is  
25 there to talk about? If we're not going to get the

1 documents we requested, I have no clue what search terms  
2 you're using. So, I asked him to provide me the search  
3 terms, and he wanted to negotiate what they would be.  
4 That's not how your order was set up. We were supposed to  
5 get a rolling production --

6 THE COURT: Well, I'm --

7 MR. MALYNN: -- in March.

8 THE COURT: -- sorry if it sounded like I was  
9 precluding the parties from negotiating over search terms.  
10 That was never my intention. There's a certain way --

11 MR. MALYNN: That's not what I'm saying.

12 THE COURT: -- that electronic discovery --

13 MR. MALYNN: That's --

14 THE COURT: -- takes place, but I don't see -- I  
15 looked at the search term list that was attached to Mr.  
16 Murphy's declaration dated April 1, 2025, and I don't see  
17 that the -- I mean, I don't know what you mean by using  
18 document requests for search terms. I'm not familiar with  
19 that. But I'm looking at the search terms that he proposed  
20 using, and I --

21 MR. MALYNN: We did not use that list, your Honor.

22 THE COURT: -- am not sure what you think would be  
23 excluded from this that would be -- I mean, I don't -- I  
24 don't know what that means to use document requests as  
25 search terms.

1 MR. MALYNN: I asked him for that list, and he did  
2 not provide that list. What he was talking about was  
3 negotiating -- I said send me a list that we can consider  
4 that what you are using for your rolling production --

5 THE COURT: Right.

6 MR. MALYNN: -- to gather documents. He did not  
7 give me that list until we had to file the motion because  
8 they violated the order. So, this list is totally after the  
9 fact.

10 THE COURT: Well, the list I have is --

11 MR. MALYNN: This is not --

12 THE COURT: -- April 1 of 2025. I believe it was  
13 transmitted to you no later than April 4 of 2025. I mean,  
14 you -- according to the emails that either you or he or  
15 maybe both of you --

16 (Simultaneous speaking.)

17 THE COURT: -- this was transmitted, but I don't  
18 see -- you know, there hasn't been any argument that these  
19 search terms were somehow under-inclusive. I think the only  
20 argument I saw was that it turned out to be over-inclusive,  
21 and kind of looking at this, I -- I guess I could see why.  
22 But, on the other hand, you know, sometimes that's what  
23 happens. But, so, okay.

24 I think we've gone through what I needed to -- at  
25 least as much information as there is on the status of

1 discovery. So, now let me open the -- the floor to hearing  
2 kind of the, you know, legal arguments or application of law  
3 to facts, et cetera. We start with you, Mr. Malynn.

4 MR. MALYNN: Your Honor, there is no surprise in  
5 this case that the purchase agreement and due diligence from  
6 day one was relevant to this case. They pled in their  
7 complaint about the acquisition, and contrary to what Mr.  
8 Murphy's saying, the acquisition doc -- you cannot interpret  
9 the assignment without the purchase agreement. The  
10 assignment does not answer. It's ambiguous. It does not  
11 answer many critical issues in this case, and we're entitled  
12 to obtain discovery as to their knowledge. They did due  
13 diligence in the middle of litigation between joint venture  
14 part -- partners.

15 Now, we have different views on who the joint  
16 venture partners are, but their deal was with -- both sides  
17 were dealing with Cinco and PCI, and both sides are dealing  
18 with trademark rights that were at issue. Now, they say it  
19 wasn't in the pleadings. It was clearly at issue at the  
20 preliminary injunction hearing in the State Court. And it  
21 was at issue in the settlement discussions. It -- in their  
22 own federal complaint, they talk about the acquisition. Of  
23 course we're going to seek the acquisition document. In  
24 connection with the preliminary injunction motion, they  
25 testified to due diligence. They test -- they put due

1 diligence directly at issue in the preliminary injunction  
2 proceedings. They submitted two declarations talking about  
3 due diligence. So, we propounded document requests to see  
4 the due diligence. Nothing. We don't see the purchase --  
5 we don't see the purchase agreement. We don't see the due  
6 diligence.

7           We don't see the due diligence that they asked  
8 Cinco to provide them. They're in a multi-million-dollar  
9 transaction, has the closing binder, and they've got to get  
10 discovery -- they have to get due diligence from Cinco.  
11 Jurisdiction by jurisdiction, in some jurisdictions, they're  
12 acquiring the entire business, not just this -- the  
13 trademark separate from the business.

14           In California they made a decision to just --  
15 according to testimony, because we haven't seen the  
16 documents substantiating this. As far as we know, it --  
17 it's not my job -- it's the jury's job to test -- to test  
18 the veracity of testimony. It's my job to cross examine  
19 witnesses. They've deprived me of the documents to cross  
20 examine witnesses. I'm entitled to do that at deposition.  
21 I'm entitled to do that at trial. And at least at trial I  
22 need the documents, and they were to be produced during  
23 discovery. They knew they were at issue. They -- they --  
24 they -- there was -- they fall with -- the only relevance of  
25 the initial disclosures, because each side disclosed what

1 they were going to use at trial. There's no -- there's no  
2 objection that the -- the initial disclosures were  
3 inadequate. The initial disclosures were fine. They told  
4 us what they want to prove at trial and what documents they  
5 wanted to use, and we told them the same.

6           The problem is they didn't produce the documents  
7 that we requested that fall within their disclosures, among  
8 other documents. Now, you've said we've asked for some that  
9 go to international, and -- and we -- we're not going to get  
10 those or they can redact the international stuff. But the  
11 domestic stuff you were very clear that we get, and if -- if  
12 they didn't parse out the United States, we get the deal  
13 points generally. We just --

14           THE COURT: Right. I think -- first of all, I  
15 just want to ask you. You mentioned depositions, but in  
16 this case, the request for the discovery conference came  
17 late in the case. So, you were never going to be able to  
18 take depositions based upon documents produced by the  
19 Plaintiffs, isn't that right?

20           MR. MALYNN: That is a hard choice. That's part  
21 of the prejudice and the choice that we had to make. We  
22 early on -- and he makes a big deal about this -- we were  
23 asked -- we were the ones that were meeting and conferring  
24 on changing deadlines on the CMO so -- so both sides could  
25 have depositions, get the documents in. We were ghosted.

1 They didn't meet and confer. By the end of the day, they  
2 ran the clock. We should have had these documents timely.  
3 We shouldn't have had the discovery fight over them. These  
4 are -- you shouldn't have relevancy fights in discovery.

5 THE COURT: But sort of the --

6 MR. MALYNN: But most of the --

7 (Simultaneous speaking.)

8 THE COURT: -- motion for sanctions is based upon  
9 the failure to comply with my court order. But at the --

10 MR. MALYNN: Yes.

11 THE COURT: -- point in time --

12 MR. MALYNN: And the prejudice that we --

13 THE COURT: -- which -- which my hearing occurred  
14 two days before the discovery cutoff date, you were not  
15 going to be able to use these documents at deposition even  
16 if I issued an order ordering the production of documents.  
17 That's what I'm --

18 MR. MALYNN: But we'd be able to evaluate the case  
19 for purposes of settlement discussions. We'd be able to  
20 evaluate the case for purposes of trial, to --

21 THE COURT: Okay.

22 MR. MALYNN: -- prepare the case --

23 (Simultaneous speaking.)

24 THE COURT: Then --

25 MR. MALYNN: -- for trial.

1 THE COURT: -- we're on the same page. We're on  
2 the same page.

3 MR. MALYNN: Right. And we -- we can't cross  
4 examine witnesses.

5 THE COURT: Right.

6 MR. MALYNN: And we shouldn't --

7 THE COURT: You cannot --

8 MR. MALYNN: -- have --

9 THE COURT: You would not have been able to use  
10 the documents in deposition anyway. That's -- that's what I  
11 was trying to point out --

12 MR. MALYNN: That's the --

13 THE COURT: -- about depositions.

14 MR. MALYNN: And I'm telling you that's -- that's  
15 the tough choice that we had to make. And, one, I don't  
16 think the Judge -- and I think the Judge has been very clear  
17 at multiple conferences, including the most recent one, that  
18 the time to ask for a continuance was last year or the  
19 beginning of this year, and I think you indicated that.  
20 And, so, we had to make the tough decision. He has a very  
21 clear standing order about what you have to do to get a  
22 trial continuance.

23 THE COURT: Well --

24 MR. MALYNN: By the end of the case --

25 THE COURT: -- let me just ask because I don't --



1 you know, what happened in front of the District Judge is --  
2 is fine, but I think my focus is sort of on what happened  
3 before me. On March 12, I --

4 MR. MALYNN: We're on the same --

5 THE COURT: -- had the impression --

6 MR. MALYNN: -- page, your Honor, that --

7 THE COURT: -- that from --

8 MR. MALYNN: -- we --

9 THE COURT: -- from both sides --

10 MR. MALYNN: -- had the choice --

11 (Simultaneous speaking.)

12 THE COURT: -- since they were going to make a  
13 proposal to change the scheduling order. Something changed  
14 in the week afterwards. Is that --

15 MR. MALYNN: No.

16 THE COURT: Isn't that right?

17 MR. MALYNN: That is not true.

18 UNIDENTIFIED SPEAKER: No, your Honor.

19 MR. MALYNN: No, that is not true. At the March  
20 12 hearing, he's -- your Honor, I've never had opposing  
21 counsel attribute to me something that they've said. They  
22 said that at the hearing. Mr. Arash (sic) was in -- I did  
23 not participate in that colloquy. Absolutely we opposed the  
24 -- on March 12th, we said in the record that we opposed. We  
25 -- we met and conferred in his office and told them --

1 THE COURT: So, the --

2 MR. MALYNN: -- it's too late.

3 THE COURT: -- the part of the transcript that  
4 attributes to you certain remarks you're saying actually was  
5 not you?

6 MR. MALYNN: It's -- of course it's not me. It's  
7 Mr. Murphy's own statements. Those aren't mine, your Honor.  
8 And the fact that he attributes to me is -- well, is a low  
9 blow. He --

10 THE COURT: Well, no. I mean, I -- I think -- you  
11 know, I -- I can see relying upon the transcript of the  
12 hearing, but what you're saying --

13 MR. MALYNN: When you --

14 THE COURT: -- is the transcript is incorrect?

15 MR. MURPHY: The transcript --

16 MR. MALYNN: The transcript is incorrect, and when  
17 you read the transcript, you know it's a dialog between Mr.  
18 Arash Beral and Mr. Murphy, and the context of it makes it  
19 very clear that that's Mr. Murphy's statement. That is not  
20 ours. Mr. Arash has been clear since February that, one,  
21 circumstances had changed, the loss of the revenue from the  
22 19 locations. We -- the parties had not been diligent and  
23 prompt in seeking relief. We did not think the Judge was  
24 going to do it. So, we made the tough decision to floor  
25 those depositions, to go to trial on the documents we got by

1 April -- the rolling production you ordered in March and the  
2 documents that we got by January 11. And if we didn't --  
3 whatever we got was in the can by January 11 and we were  
4 going to go to trial. That's the decision that we made, and  
5 -- and that -- and, so, we -- and we didn't get the  
6 documents in the rolling production.

7 THE COURT: Right. So, now --

8 MR. MALYNN: And the --

9 THE COURT: -- if you wouldn't --

10 MR. MALYNN: -- delay --

11 THE COURT: If you wouldn't mind --

12 MR. MALYNN: -- the delay --

13 THE COURT: -- addressing the issue that Mr.  
14 Murphy raised, which is that the court order of March 12,  
15 2025 was impossible to comply with.

16 MR. MALYNN: It's not impossible, your Honor. If  
17 you do your job at the beginning of the case -- and he told  
18 you on March 12th he had a rolling -- he had documents in  
19 his possession ready to be produced. That's why you ordered  
20 a rolling production, because he already had documents ready  
21 to go. In fact, he told me back in December that he had  
22 documents. He was holding as hostage documents that were  
23 directly relevant because he wanted us to make compromises.  
24 And I said to him in meet and confer correspondence you  
25 don't hold hostage documents that you have to produce

1 because you don't want to produce other documents. You  
2 don't try to leverage compromises from me. What you do is  
3 produce what's relevant now. And then we negotiate where  
4 the -- there the line's drawn.

5 The -- the proper way of doing this is back in  
6 December, I get the directly relevant documents that fall  
7 within his initial disclosures. Instead, he --

8 THE COURT: But this --

9 MR. MALYNN: -- waits --

10 THE COURT: -- Court was not involved -- this  
11 Court was not involved until the March 12 discovery  
12 conference. So, that's --

13 MR. MALYNN: That's correct, but it's not --

14 THE COURT: -- what I have to address. What he's  
15 saying is running the search terms produced over 40,000  
16 unique documents. We don't know how many pages but over  
17 40,000 unique documents and that it was not possible to  
18 review those and produce them and create a privilege log by  
19 April 11th. That's --

20 MR. MALYNN: Hold on.

21 THE COURT: -- what he's saying.

22 MR. MALYNN: Your Honor (indiscernible) -- I know  
23 it's what he's saying, but that's a false premise. You're  
24 supposed to be prepared -- you're not supposed to be waiting  
25 until March 12th to do your job. They knew what their

1 obligations were when they --

2 THE COURT: Well --

3 MR. MALYNN: -- filed this case in May.

4 THE COURT: Okay. I think that that's --

5 MR. MALYNN: Your Honor, the point is this. If  
6 there are non-objectionable documents, domestic documents  
7 that go to the transaction that you put at issue, that go to  
8 the due diligence that you've testified about, you produce  
9 those. You fight about the international ones. You fight  
10 about the international ones. You fight about what related  
11 means, but you produce the poor documents that nobody has a  
12 dispute on. Those ones shouldn't have been subject to this  
13 delay. We should have had those on -- on March 13th. They  
14 should have been prepared and ready to go. You ordered a  
15 rolling production because you knew there would be some that  
16 they would have to engage in the search terms, that they  
17 wouldn't have ready to go, that wouldn't -- that didn't fall  
18 within your initial disclosures, that -- that wasn't about a  
19 position of domestic rights, that if it was about  
20 acquisition of domestic rights, if it was about the due  
21 diligence that they testified to at the preliminary  
22 injunction, those should have been ready on March 12th to be  
23 turned over, that start the rolling production in March.

24 The additional ones on top of that that maybe they  
25 couldn't have anticipated you ordering, that's the only ones

1 that are subject to delay. Everything else that they  
2 couldn't -- if they could anticipate you ordering it, they  
3 should have been ready to go, and it shouldn't take a month.

4 I've been in plenty of cases, your Honor. It  
5 shouldn't take more than a month. You gave them a month to  
6 complete. And if they can't complete it in the month,  
7 there's no -- you invited them to come back and redo the  
8 deadline. They didn't ask. They didn't timely file an  
9 opposition or request from you to redo the deadlines. They  
10 wait -- they -- they -- they just didn't comply. You -- you  
11 said to them, You've got a month. They didn't come back and  
12 say, A month is not enough time. You -- you then invited  
13 them for recon -- on April 4th, you said, If the -- if my --  
14 you should have come to me sooner, but whatever. You said  
15 on April 4th, If you want to seek reconsideration of my  
16 deadlines, file that. They didn't.

17 Your Honor, it's been several months. It's not --  
18 a month was plenty of time. They're not doing their job.  
19 They're not doing the work. They -- this is about  
20 prejudicing us and hiding the ball. They've suppressed  
21 evidence. It's unclear -- it's -- it's absolutely clear  
22 that they've suppressed evidence on purpose.

23 UNIDENTIFIED SPEAKER: Your Honor, may I just add  
24 one thing, 10 seconds if I may. I don't necessarily agree  
25 with the premise that we couldn't have taken a deposition.

1 I think if your Honor's orders were complied with in March  
2 or April, we could have had an avenue to go in ex parte with  
3 Judge Blumenfeld to allow us to take a deposition of Spavi  
4 given the production of documents at that point in time, so  
5 long as we didn't extend any of the other deadlines like the  
6 trial dates and things because Judge Blumen --

7 THE COURT: Well, anyone could have asked for a  
8 continuance. I think that's -- but I'm saying under the  
9 existing case management order, the premise of the March 12  
10 order that I issued was that there weren't going to -- there  
11 was not going to be an opportunity to take depositions  
12 unless the schedule was moved, which was what, frankly, I  
13 understood people were going to be doing. Maybe I was  
14 wrong. Certainly it turned out to be wrong, but, you know,  
15 that -- that was, I thought, the discussion. But,  
16 obviously, different. But I think what you're saying is the  
17 same thing, that the -- the issue is, you know, either side  
18 could have gone in and asked for more time to accomplish  
19 more discovery, and I think that's obviously true. I mean,  
20 you always have that option of seeking relief. I think we  
21 would agree on that.

22 MR. MALYNN: I will say this. There has only been  
23 one point in this entire case, and in sitting in the  
24 District courtroom, seeing other cases proceed, there's only  
25 been one time, one event where the District Court actually

1 said that it might move deadlines, not the trial date, but  
2 it might move deadlines to give our side relief because Mr.  
3 Murphy had added new claims in his amended pleading at one  
4 point in time.

5 THE COURT: Right. And I think I mentioned that  
6 order.

7 MR. MALYNN: It was a footnote, and it allowed us  
8 to seek relief after a meet and confer. We invited Mr.  
9 Murphy to meet and confer. We got ghosted. Ultimately, we  
10 decided let's move forward. There was a point in time where  
11 he asked for discovery extensions. I emailed him back. I  
12 said, Okay. Provided that you agree to move the CMO  
13 deadlines, we'll give you an extension. And he told me, How  
14 dare you condition my discovery extension on this deadline.  
15 So, we took that to mean he's not going to agree, and then  
16 after sitting in the District Court's courtroom time and  
17 time again and we saw that the District Court was not  
18 willing to move trial dates and deadlines -- certainly as  
19 every day passes, it's going to be less and less clear that  
20 it's going to be moved -- on February 28th, we were -- we  
21 were in the courtroom when Mr. Murphy took me aside in the  
22 attorney conference room to ask me to stipulate to move the  
23 trial date into December or January. I told him, Look, I  
24 don't have the authority to do that, and I don't think the  
25 Court is going to do that, but if you guys are willing to do



1 a stay of the proceedings until the Ninth Circuit rules on  
2 our appeal, then that's something I could float to my  
3 client, and he got immediately angry and upset and said, No,  
4 we're never going to do that. And then we went -- we went  
5 forward.

6           That was it. There was never any other attempt or  
7 -- or insinuation by us that we're going to agree to  
8 stipulate. In fact, every time after that, we were very  
9 clear with him that the District Court -- even if we were --  
10 even if we had the authority to stipulate, which we didn't,  
11 because we're under a preliminary injunction and our clients  
12 want to move this forward to trial. Any delay is bad for  
13 them -- even if we could stipulate, we were very clear with  
14 Mr. Murphy that the District Court's not going to agree at  
15 this point to move any dead -- any trial date or deadlines  
16 -- maybe deadlines, but not the trial date. So, I don't  
17 know where this sense of, Hey, these guys were willing to  
18 stipulate and agree and then they -- they reversed. No,  
19 that -- that didn't happen. We told them as early as  
20 February, we told them, Look, that's not going to happen  
21 anymore. We could have moved in November, but they ghosted  
22 us for three months and wouldn't agree to anything. In  
23 fact, they told us in connection with the discovery  
24 extension request, How dare you condition a CMO extension on  
25 -- on our discovery request continuance.

1 So, that's the -- that's the record, your Honor.

2 THE COURT: Okay.

3 MR. MALYNN: There is an ex parte -- I don't know  
4 if you saw it, but there is an ex parte application that  
5 they filed yesterday to continue the trial. We're going to  
6 oppose it unless the Court summarily dismisses it today. I  
7 -- I don't -- or denies it today. We'll see. But that's  
8 what --

9 THE COURT: Okay. All right. So, now, Mr.  
10 Murphy, I don't know. First, let me ask you do you have an  
11 update on the questions I asked about the status of the  
12 review of the emails or the --

13 MR. MURPHY: No, I don't. I don't. I --

14 THE COURT: Okay.

15 MR. MURPHY: Yeah.

16 THE COURT: All right. So, now, would --

17 MR. MURPHY: Can I ask a favor? I didn't -- I am  
18 so -- I'm very sick, and I'm so parched, and there's -- I  
19 was yelling to my husband to see if he was --

20 THE COURT: Yes. If you want to drink --

21 (Simultaneous speaking.)

22 THE COURT: -- some water, that's fine with me.

23 MR. MURPHY: Thank you. I'm going to just go get  
24 some water.

25 THE COURT: Yes, absolutely. I don't -- this is

1 -- absolutely. I understand.

2 (Pause.)

3 MR. MURPHY: Thank you for that courtesy.

4 THE COURT: Okay.

5 MR. MURPHY: I'm ready as soon as you are.

6 THE COURT: All right. Please proceed.

7 MR. MURPHY: So, let me back up and first address  
8 some of the kind of stuff that's atmospheric and outside the  
9 motion because it does affect us, like the continuance  
10 request and all that kind of stuff.

11 So, our position to the Court now, just so you're  
12 clear, is I'm ready to go to trial on my claims that were  
13 ready to go -- or that were filed more than -- I'm ready to  
14 go to trial on any claim that was filed more than 30 days  
15 before the close of discovery. I think that's a fair thing.

16 Now, if they don't want to go to trial, you cannot  
17 -- and they -- notice, you never hear the counsel for PCJV  
18 address this following question. Cinco was not in this case  
19 when the CMO was ordered and didn't appear until April. How  
20 can it be bound by a CMO, first of all, and on what -- I can  
21 -- I have yet to see an authority that says the Fifth  
22 Amendment and the 14th Amendment permit Cinco to go -- well,  
23 force it to go to a jury trial. I mean, I don't know that  
24 case. It doesn't exist. Same thing with Spavi  
25 International and the same thing with PC International.

1           So, when we were at your hearing in March 12th, I  
2 was operating on earth, which is, of course, the Judge is  
3 going to grant it. You just got to present it to him  
4 because he's going to look at it and say, of course. This  
5 is a constitutional issue. You cannot put these third  
6 parties to trial.

7           So, that has been kind of my assumption and why I  
8 -- I always thought it was kind of -- I thought it was  
9 because we were all busy. So, when we were at the March  
10 12th hearing, I said there's -- you know, I'm requesting a  
11 continuance. Now, I remember walking out of the hearing,  
12 and I remember thinking to myself they just basically  
13 assented to the case management because his email before was  
14 like lawfully, but I was like going he didn't say a word,  
15 and I remember thinking that, and then I saw the transcript,  
16 and I was like, well, maybe he did, because that's even  
17 worse to say that.

18           Okay. So, then Todd -- Todd Malynn in his  
19 opposition -- although casting aspersions on me -- I read  
20 transcripts all day. I'm not going to question if the  
21 person is the person. I guess maybe now I will in Federal  
22 Court. I don't know. But I looked at it and said, Okay,  
23 I'm going to read this thing again and take out that Todd  
24 Malynn reference. Excuse me. I would like -- and I've  
25 asked this, please tell me -- you -- they say we were

1 express and unequivocal at the March 12th hearing that we  
2 were not going to agree to it. It's not in there, and I've  
3 asked them please tell me what page and line, where are you  
4 expressly stating that you do not agree, because they don't.  
5 So, when I left, I was like, Okay, well, I guess we're good.  
6 And then I -- and obviously we're good. So, then three days  
7 later, I -- or seven days later -- I think it was March 20th  
8 -- I gave them the proposed schedule, and that was when it  
9 got -- it just -- they were like no, no, no. And I -- I was  
10 kind of confused by this because it's so obvious.

11           So, I kept meeting and conferring because here's  
12 the other problem. We're -- we were at a moment in this  
13 case where Judge Blumenfeld was very upset at how we engaged  
14 with each other. And I thought it was better for us to go  
15 in jointly on something this obvious rather than me come in  
16 and say we had these agreements on extensions and whatever  
17 and -- and they were putting me in this position where I had  
18 to, and I -- God, I really didn't want to. So, I just  
19 thought they would -- I just thought reasonable minds would  
20 prevail. Plus, the more I thought about it, I was like, you  
21 know, they can't take these parties to trial. They can't.

22           So, I have -- so, that's our position. I think  
23 the transcript -- if they can tell me where that is, I --  
24 I'll change my mind. Maybe I'm wrong, but I don't see it,  
25 and I think I remember everyone who wasn't on their side,

1 wasn't lulled into thinking that they were agreeing to --  
2 that they were in agreement. Silence is the same thing as  
3 agreement.

4           So, that's the big concern. I do want to say one  
5 thing. This comment that, you know, we could have had  
6 depositions if -- if -- you know, because they could have  
7 asked me or -- on Exhibit 10 -- 173-10, and this is my  
8 email, and -- but I think it was an email before that where  
9 I asked for an extension on my -- on my special  
10 interrogatory responses which kind of set all of this off.  
11 It was like the next day, right. I have interrogatory  
12 responses due, and I asked them for more time because I --  
13 I'm going to be up all night, guys. And they said no,  
14 because judge -- the judge will never allow us to do this.  
15 So, they said no. So, I had to stay up all night, which was  
16 a huge problem for me.

17           So -- so, I don't -- I -- I don't understand the  
18 theme here. It's that we would agree to things if it  
19 benefits us but we won't agree to things if it's  
20 fundamentally under the Constitution.

21           All right. I'm going to put that aside because  
22 there are so many inconsistencies in the atmospherics of  
23 this. But our presentation to the Court today was, you  
24 know, we're ready to go, but -- but I think there will have  
25 to be orders prohibiting any attempts to assert any evidence

1 or witnesses against -- on the counterclaims or third party  
2 claims. Spavi International is going to subject itself to  
3 trial for millions on interference claims that are defective  
4 as a matter of law? No. There's actually one case that  
5 defeats almost all of their claims and the -- and the  
6 counterclaims. It's funny. And I have no doubt he's going  
7 to suggest that because we -- they appeared after the filing  
8 deadline for Rule 12.

9           So, let's get to the case -- or to this issue.  
10 There are three defects in the -- in their motion. The  
11 first defect is due process. I mean, this is a very serious  
12 motion, very very serious. This is a motion I have to take  
13 to my general counsel or a revenue lawyer at this firm, and  
14 -- and there's such a disconnect between that and -- and  
15 what I'm doing. I'm busting my -- my -- I was working so  
16 hard on this trying to get everything out, all this -- and  
17 I'm also trying to figure out a way forward with counsel to  
18 be -- so we're operating in a way that's, you know, more  
19 professional, but at the same time I'm getting these crazy  
20 positions. There are just -- I can't understand how you  
21 could say that, for example -- and this is relevant. They  
22 keep -- their whole motion -- or their whole claim about  
23 needing the deal documents is premised on a false position  
24 of law. And I -- I explain this in our brief. There is no  
25 such thing as U.S. rights. Our clients obtained an

1 international registration. That international registration  
2 confers the right to use that mark internationally. If my  
3 client negotiates with someone and agrees on a -- on a  
4 territory exclusion, then there are U.S. rights, but it is  
5 not inherent to the registration.

6           There is no agreement that exists that carves out  
7 the U.S. Now, they will cite to the AJVA, but here's the  
8 problem. The -- that's been interpreted by the District  
9 Court. It's been interpreted by the Ninth Circuit, and I  
10 haven't seen anything new from my opponents that would  
11 suggest they have anything new to offer as to why at trial  
12 the ruling wouldn't be exactly the same.

13           So, they have -- there's a problem there. So,  
14 there is no such thing as U.S. rights, but they keep  
15 suggesting as if there was something back handed that  
16 (indiscernible). No. And this is why it's relevant. There  
17 is a deed. That deed is comprehensive, unilateral, and it  
18 is already in the record. When you do an injunction,  
19 documents are already in the record once they're admitted.

20           So, that deed, I think it's among the first -- I  
21 think it was the first exhibit of Joy Ibanez (phonetic),  
22 who's the general counsel. And, so, that deed is  
23 unequivocal and comprehensive. And it confers all the  
24 rights through those registrations to my clients and over to  
25 Spavi. That is definitive.



1           And -- and there's so much law that says if you  
2 have a deed and the deed is at odds with the contract, the  
3 contract merges into the deed, and the deed is the contract.  
4 The deed is it. So, I asked, because I was bothered by  
5 these requests because they were asking for legal memos.  
6 They were asking for -- I mean, it was -- and -- and I think  
7 the deal documents are -- there's no -- given the size of  
8 them -- because it's a big deal. I mean, we're dealing with  
9 global rights here. The -- I could not figure out the --  
10 the proportionality of these requests and their relevance.  
11 Now, that's important here because here's what happened.

12           So, I go to this discovery conference on -- on  
13 March 12th, and I say I don't want a motion. So, let's see  
14 what we can do. But, man, if I had known I would be here, I  
15 wouldn't have agreed to anything because I -- I want to  
16 challenge each of those requests as being that you don't get  
17 them. You don't get them. You don't get to ask about them  
18 because they're not relevant to your case. They've never  
19 been expected or asked to prove the relevance of these.  
20 Why? Because I agreed to something at an informal discovery  
21 conference just to move on.

22           So -- so, when you file the 37 motion seeking  
23 sanctions, this -- sanctions in the form of you cannot prove  
24 -- like argue this thing at trial, you have to be specific,  
25 and it has to be specific from beginning to end. You have

1 to first start with the request, and it is true -- they are  
2 -- my opponents are correct -- you can -- the way the --  
3 there's a couple of cases that suggest any order can be  
4 subject to 37. So, I agree with that. But from a logical  
5 standpoint, you're going to be harder pressed to find  
6 evidence of willfulness and prejudice if I have not been  
7 given the opportunity to require them to prove prejudice.

8           So, they make all these statements about you can't  
9 prove, you know, that -- that you won't -- that you don't  
10 own the marks. Well, they didn't provide any case law that  
11 says that the documents that they didn't get would preclude  
12 them from introducing evidence on something that is relevant  
13 and material at trial. But they want this Court to just  
14 take this, I mean, cloud of words and then say, Yep, you  
15 can't go to trial on this. Yep, you can't go to trial on  
16 this. That's not how it works.

17           So, you have to have a request that is specific  
18 and that is proper because if it's not proper, you're not  
19 prejudiced. Those are connected.

20           So, then you have to show prejudice and  
21 willfulness as to specific parts of the order. But, see,  
22 they don't do that, your Honor, and the reason why is  
23 because if you go through the order, which we did today,  
24 I've done everything I can do as of the date we were  
25 supposed to. I did.

1           Now, I suppose I could have -- you know, I don't  
2 -- there's literally nothing else I could have done. I was  
3 at my wits end. I probably averted a divorce barely because  
4 I was working so hard.

5           So, we have -- so, you have to then tie to the  
6 order, which they don't do -- they go back to the request --  
7 as if you had ordered compliance with all the document  
8 requests. We know that did not happen. We know that some  
9 of the arguments that -- that were made by defense counsel  
10 were -- were not convincing, and, as a result, my goal was  
11 let's just negotiate. Let's try -- I don't -- I don't want  
12 any discovery motions, because I just don't like them.

13           And then I try multiple times as I see problems  
14 arising to communicate with them, all the while thinking  
15 that on March 12th, I know I -- I -- the -- this may be more  
16 than I can handle, but I'm sure that we're going to have an  
17 extension because everyone knows we have to, and they  
18 haven't said no. So, we'll just re -- redo the dates  
19 obviously. And then they changed, and I have suspicions  
20 about why, but it's not really relevant, and we have really  
21 tried in this argument to not cast aspersions or use things  
22 like ghosted or angry. I just don't think it's helpful, and  
23 I think Judge Blumenfeld is correct about that. But there  
24 have been really frustrating things that have gone on here.

25           So -- so, that's the -- so, and then you have to

1 have something that you didn't get that was specifically  
2 ordered that then prejudiced you as to some element that you  
3 have to prove. I have not seen that with anything, and I am  
4 going to get to the -- well, they -- they do go through a  
5 big litany about the financial documents. I've already kind  
6 of previewed my argument there. I'll get to it in a minute.  
7 But then you have to show that my not giving it to them was  
8 willful. I don't know how you could possibly look at this  
9 record and say that I was avoiding things. You can't. I  
10 was doing the opposite. I was under an avalanche thinking I  
11 was going to get -- we were going to get an extension, and  
12 then they refused, and then it just -- it was a mess.

13           So, I -- and I was juggling with a lot of  
14 considerations. So, what I decided to do was try to get as  
15 much done as I can, and -- and I don't have -- I didn't have  
16 time to really do much else except, you know, focus on my  
17 plate, being responsive.

18           So -- so, I -- you can't show willfulness, and --  
19 and I think when you add on top of that the -- the failure  
20 to explain in the reply why they didn't meet and confer with  
21 me -- I don't care what a judge says in an order. You can  
22 always meet and confer. You can meet and confer on every --  
23 on anything. You know, we agree that we're just going to do  
24 -- to have discovery up till the end. We'll modify -- you  
25 can do anything you want with a stipulation. The judge can

1 say no, but you always meet and confer, and it was mind  
2 boggling to me the -- and when we had a meet and confer, it  
3 was me, Jordan and -- and Todd and I think one that was  
4 Jordan alone with Todd and an associate, but it was always  
5 we're going to produce this date, and I was trying to  
6 explain to him I would like to talk about this, but, I mean,  
7 he wouldn't. It was all about do this thing by this date  
8 and wouldn't let me even explain what the problems were with  
9 the extensive, sometimes double triple privilege issues that  
10 we have in these documents.

11           That's not -- that's -- that's -- that's them  
12 creating an issue. What I find interesting is that the  
13 response to the April 11th email offering the entire  
14 document, now, I wasn't saying that was the end of the road,  
15 but I was saying maybe if you satisfy yourself, take as long  
16 as you want looking through this thing. I'm not going to  
17 let you make any copies. You -- if you want to question,  
18 fine, but you're not going to put any of those words down on  
19 paper or anywhere else. Just look at it, and you'll see  
20 what I see, which is there's nothing there.

21           And -- which is why the deed is enough, and that's  
22 my point at the end of the day. I have produced it. This  
23 is merged into the deed, and they had the deed from the  
24 beginning.

25           So, when he didn't respond and then in his motion

1 says I should be sanctioned, that was an astonishing  
2 crystallization of the problem because if they actually  
3 wanted to know what the contract says and whether it gave  
4 them any arguments, they would have said, Yeah, we'll do  
5 that. I mean, we -- we disagree with you about all these  
6 problems. Please -- you know, please do this, whatever.

7           That would have been -- that would have made sense  
8 because that would show they actually want it. By not  
9 answering, that just showed me that they actually didn't  
10 want it and maybe they don't believe it. They don't believe  
11 this argument. I don't know, but the silence is deafening.

12           And that leads me to the final problem -- well,  
13 the final -- the first event. The due process is just  
14 problematic from A to Z.

15           So, they have to show willfulness. They didn't.  
16 They have to show prejudice. They didn't. And then they  
17 have to tie some of the relief to those prejudices and  
18 specific facts that were ordered by the Court that they  
19 didn't get and were prejudiced. And they don't. It's just  
20 this mishmash word salad of -- of punish them.

21           So, I don't see anything that falls within any of  
22 those specific leaps of specificity required to get a  
23 sanctions motion. In fact, one of my -- I'm going to talk  
24 about why I didn't file my motion now because I actually  
25 believed that the sanctions were on the other end, and I

1 couldn't file a motion to redo the order for two reasons.  
2 First, I was going to be asking for a new order, but these  
3 guys are acting like they don't care anymore, right. The --  
4 and April 15th is the end. And I'm not going to put myself  
5 in a situation where I'm continuing orders that could be  
6 used under Rule 37 to try to default me out. I'm not doing  
7 it. I'm not doing it. In fact, this case, if we do get a  
8 discovery continuance, I -- I'm going to be really hard  
9 pressed on -- on -- on agreements and informal discovery  
10 conferences because of this.

11           So -- so, that's the -- so -- so, I did -- and  
12 then second, when I was looking at -- well, (indiscernible)  
13 thinking about it, I think that there's sanctions that are -  
14 - I -- someone could argue for sanctions. I didn't want to  
15 do it because I do think it's us. So, they didn't want to  
16 do it.

17           But I do think the reply was confirming of some  
18 things. For example -- and this goes to the fatal defect to  
19 -- which I've already touched on a lot of these. They don't  
20 address many of the arguments we made. They don't address  
21 what I say is their role in this happening, particularly  
22 with the -- the larger set of requests that required search  
23 terms that this -- that they -- they set us up for failure  
24 themselves by not meeting and conferring. That's  
25 sanctionable. It's -- I don't see how you can then file a

1 motion, right, for us to be sanctioned when you didn't even  
2 meet and confer on any of these. That -- that is -- to me,  
3 that was really bothering me. It was troubling.

4           Then they don't -- you know, this -- this -- I --  
5 I was shocked by this one. I almost think that maybe they  
6 didn't read our motion because we attached the email from  
7 Jordan attaching the -- the search terms. I received the  
8 email. So, I know it was transmitted, and I know Todd  
9 Malynn got it.

10           So, for them to say they didn't get the search  
11 terms -- so, they said that in the motion, and then in our  
12 opposition, we were like, yeah, you kind of did. And then  
13 in our reply, they don't say anything. And then your Honor  
14 brings it up again, and they say, We didn't. So, either one  
15 or two things. Either they didn't read it, our motion, our  
16 opposition or, two, something else. And I -- I don't know.  
17 What I do know is that any aspect of their motion that was  
18 based upon search term related requests, that obviously  
19 that's their fault, and that's what I would have to put in  
20 my sanctions order and in a -- in a new motion. I didn't  
21 want to do it.

22           So -- so, here's -- so, fatal defect two is just  
23 they -- they haven't addressed a lot, and I could go through  
24 everything that we raised that they didn't, and I'm not  
25 because my -- my motion has probably -- or the opposition



1 probably has 20 different independent bases upon which you  
2 could deny this motion, but they just didn't.

3           So, fatal defect three, they don't explain -- now,  
4 I understand -- I mean, and we make some points in ours.  
5 It's like how is this right that we are scrambling and  
6 reviewing and search terms and all of this and they aren't  
7 doing anything? How is that -- how is that happening,  
8 because that to me seems highly inequitable, and they --  
9 that's not what the Rules are intended. And, you know, so,  
10 I don't understand that. I don't understand how it is that  
11 this Court had to order production of the documents from Mr.  
12 Engel. I don't know how.

13           So, at the end of the day, I go back to my -- one  
14 of my points in the beginning, which is think about the  
15 consequences generally or the impact of what Magistrate  
16 Judges do, because I have not -- without exception, I've  
17 found the Magistrate Judge improvement into the system,  
18 because I'm old enough where I remember when you guys  
19 weren't doing all this, is probably one of the most  
20 significant changes in -- in -- in litigating in Federal  
21 Court. It has been so effective.

22           Think about what happens. The first discovery con  
23 -- so, an order comes out. If on the first discovery  
24 conference you've got requests that the party being  
25 requested was going to take to a motion and probably going

1 to lean on only some of them or a lot of them and had good  
2 arguments, Judge agrees to produce some things and under a  
3 really short timeline and tries to meet and confer, but the  
4 other side won't because they're stuck with the order, and  
5 then they file a Rule 37 motion. You will never see anyone  
6 agree under -- to an informal discovery conference ever  
7 again. You won't. Or they'll just be useless, and you're  
8 going to find yourself wondering am I not getting an  
9 agreement because of that.

10           So, that's not a threat. It's just I know what  
11 I'm going to be thinking next time I'm in front of a  
12 Magistrate Judge and they're asking me to agree on  
13 something, because asking me for legal memos, I was  
14 surprised they even asked for it, right. And then to be  
15 told that I should get sanctioned for not producing them, I  
16 don't -- I'm not -- I'm troubled by that. So --

17           THE COURT: So, let me follow up on a couple of  
18 things. One is I take it your client is not waiving the  
19 attorney-client privilege?

20           MR. MURPHY: My client is not waiving the  
21 attorney-client privilege, correct.

22           THE COURT: Okay. And then you mentioned that the  
23 Defendants have not produced documents other than the expert  
24 -- excuse me -- the expert related documents. So, I think  
25 in your brief you mentioned the initial disclosures that the

1 -- as far as you know, the Defendants have not produced the  
2 documents described in their initial disclosures or  
3 documents that you have agreed --

4 MR. MURPHY: Correct. There's another set. So --  
5 so --

6 MR. MALYNN: Your Honor, they have all the  
7 documents that we're going to rely on.

8 THE COURT: Hold on. I'm just asking Mr. Murphy  
9 to explain what -- what his argument is. Is he talking  
10 about documents that the Plaintiff has requested, is he  
11 talking about the Defendants' initial disclosures that were  
12 served in February --

13 MR. MURPHY: Two -- two --

14 THE COURT: Let me get clarification.

15 MR. MURPHY: That's right. So, first, there are  
16 two -- two answers. First, the initial disclosures. For  
17 example, my opponents have taken the position that they  
18 were perfectly allowed to reverse engineer the -- the  
19 ingredients of the packets. They have yet to specify which  
20 ones they are. So, if that's your defense, then you are  
21 obligated to produce information as to who that was. I --  
22 they haven't produced it. I don't know who did the reverse  
23 engineering. I don't know what flavor this was. I don't  
24 know which packet it was. So, it could be different  
25 (indiscernible) options. So, that's a -- that -- so, it's

1 that kind of stuff.

2 So, yes, their initial disclosures I didn't  
3 anything. And had they produced it so late, I couldn't have  
4 filed a motion.

5 So, then we have this problem. As proof of the  
6 fact that I legitimately thought we were going to get an  
7 extension on the CMO, we served our request, and they just  
8 refused -- they just -- on -- you know, discovery closed,  
9 and like two days later would have been the due date, and  
10 they just said, Objection. Not responding.

11 And, so -- because of the discovery cutoff. And  
12 they were good requests. We're going to have to deal with  
13 that if there is a continuance because that's a -- that's a  
14 problem for me. I hope they've been gathering documents  
15 since then because the expectation of one would be the same  
16 as to the other. So, that's the answer.

17 MR. BERAL: Your Honor, may I address --

18 THE COURT: Hold on one second. There was some  
19 issue. I'm going back through my notes. I thought there  
20 was another -- something that I flagged. No.

21 Okay. So, then, Mr. Beral, you're going to  
22 respond?

23 MR. BERAL: I just need to minutes to --

24 THE COURT: Okay.

25 MR. BERAL: Procedurally, what has happened -- and

1 Mr. Malynn can handle the substantive points, because I know  
2 your Honor hasn't been with us and hasn't lived this case  
3 the way we have, but I think it's -- it -- I need to address  
4 these points with your Honor so that you have a better idea  
5 of what actually occurred.

6           So, first and foremost, this is what we call part  
7 two of litigation between, you know, various parties in  
8 California and various parties in the Philippines. There  
9 was a State Court litigation that ended on May 28th, 2024,  
10 settled, reported to the Judge, and done. Three days later,  
11 Mr. Murphy filed this lawsuit and sent a demand -- or notice  
12 of termination of IP rights and things to -- to our client.

13           That weekend there was various communications  
14 between Mr. Murphy and me in an email, including why Cinco  
15 is involved and why Cinco, including a demand for indemnity  
16 from Cinco of our clients. There are emails about all the  
17 claims and defenses and everything, our position basically,  
18 legal positions, in that -- in those emails.

19           So, for him to say, We had no idea that you were  
20 going to bring Cinco into the case, that's not true. I  
21 informed Mr. Murphy of that well before in that -- that --  
22 as soon as this case was filed.

23           Then there was meeting of counsel, scheduling  
24 conference, all those kinds of things with Judge Blumenfeld.  
25 We hadn't even appeared in the case at that point, but we

1 voluntarily agreed to participate in those proceedings. As  
2 part of those proceedings, we filed with the Court the Rule  
3 26 report which went on for pages and pages.

4 THE COURT: I -- I'm sorry. You're saying that at  
5 the scheduling conference, your -- the Defendants were not  
6 in the case?

7 MR. BERAL: We had not appeared. Our deadline to  
8 respond was a month after the scheduling conference. So, we  
9 filed our motion to --

10 UNIDENTIFIED SPEAKER: You were (indiscernible) --

11 MR. BERAL: We filed our motion to dismiss no  
12 September 30th. The scheduling conference was September 6.

13 THE COURT: Okay. I -- now I understand.

14 MR. BERAL: So, we hadn't filed a responsive  
15 pleading in other words.

16 THE COURT: Okay. All right.

17 MR. BERAL: We -- we voluntarily agreed to  
18 participate in the scheduling conference. And as part of  
19 this Rule 26 report, we addressed and included our claims,  
20 our positions, our witnesses, our documents. Everything  
21 that Spavi needed to know, it knew back in August 27 of  
22 2024. Okay.

23 THE COURT: I'm not sure what that means. Is  
24 there some dispute that the Cinco entity -- that this Court  
25 acquired jurisdiction of Cinco after the -- the cutoff

1 dates?

2 UNIDENTIFIED SPEAKER: There were -- we weren't in  
3 Federal Court, your Honor.

4 THE COURT: Is there a dispute there? I --

5 MR. BERAL: So --

6 THE COURT: I'm not sure where this is going.

7 MR. BERAL: Well, I just want to be -- I just want  
8 to make sure that your -- your Honor understands where  
9 things are going. Cinco wasn't in the case at that point  
10 because we hadn't yet answered or counterclaimed in the  
11 lawsuit, right.

12 THE COURT: Okay.

13 MR. BERAL: So --

14 THE COURT: Right.

15 MR. BERAL: -- Spavi -- Spavi -- I -- Cinco could  
16 have brought the claim too, but they didn't. It was Spavi.  
17 All right. So, in any event, but Cinco was part of the  
18 State Court litigation, represented by Mr. Murphy. They had  
19 an indemnity demand out to them. They certainly knew and  
20 were aware of this litigation all along. All right.

21 As soon as we filed our motion to dismiss, I  
22 reached out to Mr. Murphy and his then colleague, Mr. Hsu,  
23 and I said that we did not address at the scheduling  
24 conference the deadline for the parties to serve their  
25 initial disclosures. Let's set up something to talk about

1 that. Nothing happened after that. There was no party.  
2 There was no -- Spavi didn't approach us to say, Let's serve  
3 initial disclosures. Let's do this. Let's do that. Let's  
4 set a deadline. Nothing.

5 So, we just relied on the Joint Rule 26 report  
6 that had been filed in August where the parties had  
7 essentially disclosed documents, witnesses, their claims,  
8 their positions, and things of that sort.

9 We then served discovery in December 2024.

10 THE COURT: I'm not sure I understand. So, if --  
11 the default is 14 days after the Rule 26 conference unless  
12 a different time is set by stipulation or court order. So,  
13 are you saying there's no stipulation or court order?  
14 Wouldn't then the time for initial disclosures be 14 days  
15 after the --

16 UNIDENTIFIED SPEAKER: I have the answer.

17 THE COURT: -- Rule 26 conference by default?

18 MR. BERAL: No, your Honor, because in the Joint  
19 Rule 26 report, there was a dispute about when the initial  
20 disclosure should be due. There was a difference of opinion  
21 about -- from Plaintiffs and Defendants about whether the  
22 initial disclosure deadline should be stayed pending a  
23 motion or whether they should be due two weeks or three  
24 weeks. I forget what Plaintiff's position was, but the  
25 Court, Judge Blumenfeld, the District Court, did not address



1 that issue --

2 THE COURT: Okay. Got it.

3 MR. BERAL: -- on --

4 THE COURT: All right. So, then that was -- got  
5 it. Now I --

6 UNIDENTIFIED SPEAKER: We were very clear on the  
7 record about our objection to this.

8 THE COURT: Okay.

9 MR. BERAL: It just -- it just wasn't addressed,  
10 all right. We served discovery requests in December very  
11 diligently. The motion that -- the discovery deadline  
12 cutoff was March 14th, as everybody knows. We got, you  
13 know, demands for extensions and things. Plaintiff then  
14 amended their complaint and added more parties and more  
15 claims. We had this whole issue about whether we needed to  
16 continue the deadlines. Ultimately, Mr. Murphy basically  
17 suggested and insinuated that he would not agree to continue  
18 any deadlines. Meanwhile, at the same time, we -- we -- we  
19 now know that Mr. Murphy's client was out there trying to  
20 convert our client's franchisees for itself to do business  
21 with it and so on and so forth.

22 So, at the same time we're dealing with injunction  
23 proceedings and various things. I even invited Mr. Murphy  
24 to take the depositions of our clients in that -- in that --  
25 during those whole proceedings. I have emails about this.

1 (Simultaneous speaking.)

2 MR. MURPHY: We should not go down this road  
3 because you're -- this is a -- I will have to --

4 THE COURT: You know, I think this is kind of  
5 getting into the merits. I think we are very far afield of  
6 the motion for sanctions.

7 UNIDENTIFIED SPEAKER: (Indiscernible.)

8 THE COURT: So, I really can't address this. You  
9 know, whatever proceedings you had in front of Judge  
10 Blumenfeld, if he ruled, didn't rule, I mean, that --

11 MR. BERAL: I'll finish in --

12 THE COURT: There's nothing I can do with this.

13 MR. BERAL: I'll finish in 10 seconds because it's  
14 relevant.

15 MR. MURPHY: Your Honor, I -- I object to this.

16 MR. BERAL: Your Honor --

17 MR. MURPHY: I get to have a chance to respond.

18 THE COURT: I'm not going to -- I'm not going to  
19 be able to do anything with this anyhow, but if you want 10  
20 seconds, you've got it.

21 MR. BERAL: Ten seconds. Spavi did not serve any  
22 discovery requests until February 14th. It was late. All  
23 right. Their deadline to serve discovery requests was  
24 February 11th.

25 (Simultaneous speaking.)

1 MR. BERAL: It wasn't until they realized that  
2 they were late in serving discovery requests when they  
3 changed their position to now say, We need a CMO extension.  
4 I just want the Court to be aware of that.

5 MR. MURPHY: Your Honor --

6 MR. BERAL: They also did not --

7 THE COURT: Okay. So, I've got that point. So --

8 MR. MURPHY: Your Honor --

9 (Simultaneous speaking.)

10 THE COURT: Why don't we -- hold on. Hold on.  
11 Hold on. Hold on. We need to get to Mr. Malynn.

12 So, you're going to deal with the substance of  
13 what Mr. Murphy's argument was.

14 MR. MALYNN: Yes.

15 THE COURT: So, you have the floor now.

16 MR. MALYNN: All right. There's a lot to unpack  
17 there. I'm going to start where he started. There's no such  
18 thing as international trademark rights in the United States.  
19 Your -- your Honor, there's international pathways to get  
20 rights in the United States, but you still have to comply  
21 with all the requirements of the United States law, and the  
22 rights you get in the United States are territorial. It's  
23 always been territorial. It's jurisdictional, geographical.  
24 It's -- it's about likelihood of confusion, your Honor, in  
25 the territory where you -- the market in which you do

1 business, and they claim nationwide rights. It's the United  
2 States. You don't get grant -- you don't get international  
3 rights until you prove you have domestic rights. There's no  
4 such thing as international -- this global intellectual  
5 property. That's a misnomer. Don't believe it.

6           Second, the issue under Sengoku (phonetic) is  
7 precisely dealing with a foreign trademark registrant against  
8 an exclusive domestic user. Both of them qualify as a single  
9 source and origin. The question is did the -- the exclusive  
10 domestic user agree to give their use to the benefit of the  
11 foreign trademark registrant. That is what is at issue in  
12 this case, did PCJV, the first continuous user and exclusive  
13 user for 15 years, agree to give the rights to the foreign  
14 registrant. And that's going to be litigated.

15           You cannot answer that question from a deed of  
16 assignment. You can't.

17           THE COURT: I cannot answer that question at all.  
18 So, these are the arguments you're going to be making in  
19 front of --

20           MR. MALYNN: No, no.

21           THE COURT: -- the District Judge. So, I think,  
22 instead --

23           MR. MALYNN: No, no. Prejudice -- the prejudice  
24 point, he was saying that we didn't suffer prejudice  
25 precisely because of this point. He says that he can meet

1 his burden of proof just with a deed. That is absolutely a  
2 fallacy. It is wrong. The deed does not answer any of the  
3 questions on the flowchart that we provided you. We needed  
4 those documents. He -- if he had done -- he is a very smart  
5 man. He knows what his obligations were. I didn't have to  
6 tell him what his obligations in discovery -- what his  
7 obligations on the case in chief are. He cannot meet his  
8 burden of proof without the documents he suppressed. He  
9 suppressed them for a reason, and I don't care if it's  
10 negligence or -- it's absolutely --

11 THE COURT: I want to give you -- I'm sorry to  
12 interrupt you, but I got to get you on to a specific issue  
13 that I would like you to address, the one that he started  
14 with, which is actually a due process argument. And, so,  
15 that's the one that I think I would like to focus on in your  
16 response before -- I -- I'm not stopping you from talking  
17 about anything else, but I would like you to address this due  
18 process argument. And, specifically, since we went through  
19 -- I went through carefully the facts of the underlying  
20 production and the timing as best as I could from the record,  
21 the due process argument about compliance with an order,  
22 which I issued on March 12 -- and I understand your statement  
23 about the history. I'm not asking you to repeat the history.  
24 But I've got to look at the issue of compliance with the  
25 court order. And --

1 MR. MALYNN: Yes.

2 THE COURT: -- the factors that he has raised in  
3 his declaration and the argument here is that the -- the  
4 order could not be complied with as it turns out, and that --  
5 it does raise a due process argument. So, that's -- you  
6 know, he's mentioned it a few times. I want to tell you that  
7 that's something I am looking at, due process, for obvious  
8 reasons. And, so, I want to give you -- I want to tell you  
9 that. I want to give you an opportunity to respond, and then  
10 tell me anything else you want to tell me.

11 MR. MALYNN: Okay. Your Honor, this -- your  
12 question overlays with the willfulness standard. The  
13 willfulness standard is -- is easily met in this case. The  
14 standard -- we can talk about bad faith, which is a higher  
15 standard than willfulness. The willfulness standard is  
16 easily met in this case. You -- your order was very clear.  
17 Your order gave due process. Your order overruled objections  
18 that he's still repeating. He should not be repeating those  
19 objections. That's not substantial compliance. He's  
20 repeating his objections. Those objections were ruled upon.  
21 His -- his task was to comply with the order.

22 Due process is if you can't comply, you come in and  
23 seek relief. He said he could comply. He -- on March 12th,  
24 he said, We already have documents ready to go, and that's  
25 why you ordered the rolling production. You didn't order

1 rolling production before he said he had documents ready to  
2 go. You ordered -- you said start those in mid March and  
3 then complete by April 11th. And you -- you said set up  
4 April 4th to solve problems.

5           The problems you heard on April 4th is he hadn't  
6 produced anything. We couldn't review search terms  
7 meaningfully. We couldn't review custodians of records  
8 meaningfully because he hasn't produced anything. All he  
9 wanted to do was negotiate and us to give compromises. But  
10 -- but, Judge, you had already ruled on what was produced --  
11 already produced and what wasn't. There was no further  
12 compromises --

13           THE COURT: But at that --

14           MR. MALYNN: -- to be had.

15           THE COURT: -- at that April 4, you know, he did  
16 say that he was going to seek a change in the order and  
17 previewed a -- I saw in the email where he said that the  
18 search terms were overbroad in an email that he sent to  
19 someone. At that point -- but let's say he doesn't --

20           MR. MALYNN: Your Honor --

21           THE COURT: -- file an affirmative motion to vacate  
22 certain portions of the order. He could have done that. I  
23 agree with you. But under due process --

24           MR. MALYNN: There's two -- two things --

25           THE COURT: -- doesn't --

1 MR. MALYNN: -- he could have done.

2 THE COURT: -- impossibility factor in here  
3 regardless of whether he files an affirmative motion or not?

4 MR. MALYNN: There's not impossibility here, your  
5 Honor, because there are a core set of documents that could  
6 have always been done timely. He -- he doesn't have to  
7 produce everything at once. You ordered a rolling  
8 production. You gave them a month to produce something.

9 THE COURT: Well, but --

10 MR. MALYNN: They produced nothing.

11 THE COURT: -- the only documents that we are still  
12 left with after my inquiries is this -- what we call the  
13 search term group that is being reviewed even on an ongoing  
14 basis. So, that's the only group of documents that you have  
15 not yet received all of.

16 MR. MALYNN: Your Honor, it's not -- that's -- I  
17 don't think that's a fair characterization of the record. We  
18 got none of the purchase agreement. We got none of the due  
19 diligence documents. We got none of the risk assessment, and  
20 the legal memo that they're privileged, we did not get a  
21 privilege log. There's a purpose for a privilege log. He's  
22 offended that I asked for doc -- there -- there is two  
23 separate parties, Cinco and Spavi, negotiating a business  
24 deal. The business deal includes risk. They're in the  
25 middle of a litigation. You've seen the flowchart. All



1 those issues have to be resolved. The go to is right there  
2 on the ownership level to deal with a domestic exclusive user  
3 versus a foreign rights holder. That's the whole point of  
4 the go to. He acts like it's irrelevant, but that's not your  
5 issue.

6 Secondly, even if there's ownership, it's --

7 THE COURT: Oh, I think we've lost him. Can you --  
8 ah, there. We've got you back.

9 MR. MALYNN: The only thing a deed (Zoom glitch).  
10 I'm back. The only thing a deed proves (Zoom glitch), and  
11 even if they prove ownership, even if their ownership  
12 argument prevailed, it does not -- it's ambiguous. It does  
13 not answer the questions that go to the affirmative defenses.  
14 It does not answer the question of use rights, license  
15 rights, control rights. It -- it doesn't -- it doesn't  
16 address preexisting rights at all. Assignment does not tell  
17 you what rights existed before the assignment and how you're  
18 dealing with those in the purchase agreement. They are  
19 absolutely -- were there. They were part of the State Court  
20 litigation. They knew they had to be addressed in the  
21 transaction documents. What do we do with -- with our  
22 client's assertion? We object -- before the -- before their  
23 deal closed, months before their deal closed, it was  
24 announced in December. Their deal closed March or April.  
25 Arash objected to the transaction with the mediator. The

1 mediator demanded a letter describing the transaction because  
2 they didn't want to produce the purchase agreement at --

3 THE COURT: You know, I --

4 MR. MALYNN: -- that point. The --

5 THE COURT: -- am concerned about is there a  
6 problem with discussing what happened during a mediation in  
7 State Court?

8 MR. MALYNN: It's already been -- it's already --  
9 all of it has been -- they submitted it to the District  
10 Judge. The District Judge knows what happened in the State  
11 Court.

12 THE COURT: Oh.

13 MR. MALYNN: It's already --

14 MR. MURPHY: I -- I'm fine with it. It doesn't  
15 bother me.

16 THE COURT: Okay. All right.

17 MR. MURPHY: If it doesn't bother the Court.

18 MR. MALYNN: The point -- the point is whether they  
19 agree or disagree with our client's preexisting rights,  
20 they're in the due diligence documents. So, presumably -- I  
21 don't see how you close a transaction without saying, Cinco,  
22 I'm the buyer. You're the seller. Give me all the following  
23 due diligence -- we want to see what they requested in due  
24 diligence. We want to see what Cinco provided in due  
25 diligence. That's not privileged -- about the United States.

1 They had an existing litigation going on where we were  
2 asserting superior rights before they closed the transaction.

3           How did they deal with our assertion of rights  
4 before they closed the transaction? Were they traveling  
5 under the master license agreement that they subsequently  
6 denied? Were they traveling under the joint venture  
7 agreement? If they're not trans -- if they're not traveling  
8 under the written documents, did they acquire rights under  
9 the written documents? If they didn't acquire rights under  
10 the written documents, we acquired them from Cinco. They  
11 sold them to us. These are questions a deed of assignment  
12 cannot and never would answer. Spavi knew it from day one  
13 when they did due diligence. None of the questions in our  
14 flowchart are answerable by an assignment alone. It's  
15 ambiguous. And the case law is absolutely clear. We  
16 included it in the footnote. We will fully brief it with the  
17 District Judge. It's a separate ground. It has nothing to  
18 do with -- it's a relevancy issue that -- that, one, does  
19 prove our prejudice. But, two, it's a separate ground for  
20 exclusion at trial. And we're going to have this issue with  
21 the -- with the Magistrate. You don't -- I mean, with the  
22 District Court.

23           THE COURT: I was going to say --

24           MR. MALYNN: You can't --

25           THE COURT: -- with the District Judge, motions in

1 limine go before him.

2 MR. MURPHY: That's also --

3 MR. MALYNN: And objections to evidence --

4 (Simultaneous speaking.)

5 MR. MALYNN: And -- and the point is when a deed of  
6 assignment is ambiguous as to an element in their case in  
7 chief, they can't meet their burden of proof, and that's the  
8 prejudice that we're suffering because he's deprived of -- of  
9 all these documents that not only go to his burden of proof,  
10 but the underlying documents, correspondence, draft  
11 agreements -- your Honor, we didn't get draft agreements that  
12 informed the purchase agreement. We didn't get --

13 THE COURT: I'm not sure why --

14 MR. MALYNN: -- negotiations --

15 THE COURT: -- we are talking about the draft. I  
16 think we were talking about the actual document. So, I --  
17 I'm -- I don't want to go --

18 UNIDENTIFIED SPEAKER: We also asked for draft --

19 THE COURT: -- far afield here --

20 UNIDENTIFIED SPEAKER: -- agreements --

21 THE COURT: -- but I -- I think -- all right.

22 MR. MALYNN: We -- the point --

23 THE COURT: The -- so, we're -- we're talking about  
24 you --

25 MR. MALYNN: So, they made a --

1 THE COURT: -- seem to be focusing --

2 MR. MALYNN: -- willful decision --

3 THE COURT: -- on the agreement and the due  
4 diligence.

5 MR. MALYNN: They made an intentional decision not  
6 to comply with your order. And now they're claiming  
7 impossibility, and that's not true, your Honor. They had an  
8 entire month to do this. They just didn't dedicate the  
9 resources to get it done, and what you're hearing is that  
10 they put their resources elsewhere. They didn't do the --

11 THE COURT: Well --

12 MR. MALYNN: -- job, but it's not impossible in a  
13 month to produce documents, and, your Honor --

14 THE COURT: Well, to produce documents, no. But  
15 search terms returned for over 40,000 unique documents that  
16 have to be reviewed for privilege, doesn't he have an  
17 argument that that is not a viable thing to do in the -- in  
18 the short time between March 12 -- because, first of all, you  
19 have to come up with the search terms. And then you have to  
20 run them, and then you have to, you know, collect the  
21 documents, and then you have to review them, and then I will  
22 ask Mr. Murphy about this more specifically but review them  
23 for privilege and create a privilege log and determine what  
24 it is that you can produce. I --

25 MR. MALYNN: Your Honor, three responses directly

1 to that. One, not for the core documents that they knew from  
2 day one the purchase agreement, drafts thereof, and due  
3 diligence related thereto and board minutes about assessment,  
4 those ones should have been -- those are directly responsive,  
5 and they fall within their initial disclosures. That's the  
6 relevance on --

7 THE COURT: Now, he's saying differently by my --

8 MR. MALYNN: -- the initial disclosures.

9 THE COURT: By the way, you understand that the  
10 diligence documents are within the email search term  
11 category?

12 MR. MALYNN: No.

13 THE COURT: Well, that's what he has said. I mean,  
14 I just want to make sure you understand that. The agreement  
15 is a different one. That's Document Request Number 1. But  
16 you're focusing in terms of prejudice on the Document Request  
17 Number 1 and the due diligence. It sounds like those are the  
18 two core --

19 MR. MALYNN: When you testify -- your Honor, when  
20 you testify at a preliminary injunction hearing that due  
21 diligence is why you should get a preliminary injunction, you  
22 can't hide behind and say they're no longer relevant. They  
23 should have been teed up and ready to go.

24 Now, with respect to documents that aren't part --  
25 that they disclosed to us that they may use at trial, that

1 they, in fact, did use in the preliminary injunction hearing,  
2 with respect to other documents, if they couldn't -- if one  
3 month wasn't enough, you invited them a -- a procedural way  
4 out, and they didn't avail themselves of it. So, you got to  
5 discredit their after-the-fact, Oh, don't sanction us when  
6 you gave them a path forward and they didn't choose it.

7           Now, with respect to their third position that, Oh,  
8 ho, one month, and I'm sorry we didn't ask for more time and  
9 a reconsideration, but we still -- it's still June 27th, and  
10 we haven't done the work yet, your Honor, that's not sincere.  
11 They haven't done the work because they have no intention of  
12 complying. They would -- they want to do as little as they  
13 can do before trial.

14           If they really were trying not to violate the  
15 Judge's order, they'd produced the core documents, they'd ask  
16 for relief on the search terms that aren't the core  
17 documents, but when they do neither of those, they tell you  
18 by their reply brief substantial compliance. And giving us  
19 public record documents that we already have in our  
20 possession, because they're public records, your Honor, they  
21 didn't move the needle one iota in this case. Those are  
22 publicly available filed. They didn't produce anything that  
23 wasn't already public record. That is unfair prejudice.  
24 That is in violation of this order. They had no diligence to  
25 -- for -- you can't say substantial compliance as of June

1 27th. That is not substantial compliance. That's just not.  
2 You ordered it April 11th. You gave them a path forward.  
3 They didn't take it, and what? The end of April, the end --  
4 the middle of May --

5 THE COURT: I guess the question --

6 MR. MALYNN: -- we are now June 27th.

7 THE COURT: -- is now for -- Mr. Murphy, I have a  
8 question for you about the attorney-client privilege. So,  
9 he's mentioned the due diligence between Spavi and Cinco. Is  
10 there a question about the application of attorney-client  
11 privilege from your perspective?

12 MR. MURPHY: No. Well, yes. There -- there are  
13 two -- there are a lot of issues. First of all, when you're  
14 doing due diligence for a publicly traded company, guess  
15 who's always on every email? General counsel's on those  
16 because they're always providing advice. It's not business.  
17 They're providing legal advice. So, that is one big glaring  
18 issue. Even if I wanted to produce due diligence documents,  
19 I don't, but I agreed I would if there were any nonprivileged  
20 due diligence documents that referred to PCJV or some stuff.

21 So, they may -- I -- they may be in there, the ones  
22 that don't mention -- that don't have lawyers involved. I  
23 haven't gotten through all the documents. I don't know, but  
24 I will say this. I don't think they should be produced, and  
25 if I had known this, I would have taken this to a motion.



1 THE COURT: Okay. The other question --

2 MR. MALYNN: Your Honor --

3 THE COURT: -- have you received any word from --

4 (Simultaneous speaking.)

5 THE COURT: -- your -- I'm sorry. Just one more.

6 Mr. Murphy, have you received any information from  
7 your colleagues --

8 MR. MURPHY: I -- I have -- so, I have in my -- in  
9 my email box the emails from the internal like where we were  
10 ready for these to be produced, but I -- those are kind of  
11 privileged work product, and, so, I don't have the outgoing  
12 email because I'm not on that email. So -- I don't think.  
13 So, I just don't have them is the answer to that.

14 THE COURT: Okay.

15 MR. MURPHY: But I --

16 THE COURT: I -- I'm wondering if --

17 MR. MURPHY: I understand that --

18 THE COURT: -- it would be helpful -- you know, I  
19 don't -- I know there's a time crunch here. So, I want to be  
20 able to prepare my report and recommendation as soon as  
21 possible to the District Judge and to the parties. So, I  
22 don't want to delay this, but I'm wondering if maybe by  
23 Monday Plaintiff could give the Court an update on how far  
24 you got. In other words, did you produce any documents out  
25 of that search term group and, if so, about when? I mean --

1 MR. MURPHY: So, I'm going to -- you know what?  
2 Because I -- I feel -- I want this -- I want to just  
3 finish -- so, I'm going to tell you --

4 THE COURT: Well, you can just tell me on the  
5 record now. You don't have to -- I'm not asking you to  
6 forward any internal law firm, you know, communications. You  
7 can just tell me on the record.

8 MR. MURPHY: Yeah. So --

9 THE COURT: That would be -- accept that -- but --  
10 or maybe you could, you know, do that by Monday or something.

11 (Simultaneous speaking.)

12 THE COURT: I just want to have it for the record.  
13 It's not that it's going to be, you know, the centerpiece of  
14 anything. It's just that I -- I think it would be helpful --

15 MR. MURPHY: I know --

16 THE COURT: -- for the Judge -- the District Judge  
17 to know where things stand now.

18 MR. MURPHY: We have produced documents. We are  
19 reviewing documents. It has been an ongoing process on our  
20 end consistently. You can have that on the record. I have  
21 approved batches of documents to be produced, and I -- and,  
22 so, I approved them on multiple dates. So, I know that has  
23 been the case.

24 THE COURT: So, you know it --

25 MR. MURPHY: I know that --

1 THE COURT: -- has been an ongoing --

2 MR. MURPHY: I know that we are --

3 THE COURT: -- production and?

4 MR. MURPHY: Yes, absolutely. Yes, 100 percent.

5 THE COURT: All right. So, okay.

6 MR. MURPHY: That's correct, and to report --

7 MR. MALYNN: But there's been one production of  
8 publicly records -- of public records, your Honor. That's  
9 all we've gotten.

10 THE COURT: So, I -- okay. There's a dispute about  
11 that. If -- if there is some -- you know, if there are dates  
12 on which you -- you produced documents and could give the  
13 maybe Bates stamp numbers or something, that might be  
14 helpful. I just -- I -- because I want to be able to say one  
15 way or another if there have been documents produced from the  
16 search term group or not. I mean --

17 MR. MURPHY: Oh, they're --

18 (Simultaneous speaking.)

19 THE COURT: -- maybe -- if we can't do it, we can't  
20 do it. I really --

21 (Simultaneous speaking.)

22 THE COURT: You know something? I've changed my  
23 mind. I think that because of the deadlines here and it's a  
24 short time, I think it's more important for me to be able to  
25 write the report and recommendation based on what I have, and

1 then the parties are always free to supplement. It's really  
2 only the search term group. So --

3 MR. MURPHY: Can I just say -- I just want to say,  
4 so, I -- I have -- I know for a fact that post my  
5 declaration, there -- I remember one of those productions  
6 because it -- it was a little -- things got a little wacky  
7 internally as far as the process. But I -- I -- I can tell  
8 you that after my declaration, we produced documents from  
9 that search term group. I can tell you for the record that  
10 after my declaration -- and it continued up through last week  
11 -- to review the documents to have them ready to produce,  
12 and, so, it is -- it didn't stop at all. So --

13 THE COURT: Okay. That's enough then, through last  
14 week.

15 UNIDENTIFIED SPEAKER: Your Honor, and I --

16 THE COURT: Post your declaration --

17 MR. MALYNN: They --

18 THE COURT: And --

19 MR. MALYNN: They have not produced anything.

20 THE COURT: -- after the declaration up until last  
21 week. Do I have that right?

22 MR. MURPHY: Yes. And we're continuing to review,  
23 absolutely, 100 percent.

24 MR. BERAL: May I help -- may I help the Court,  
25 your Honor, if I may?

1 THE COURT: Sure.

2 MR. BERAL: We received a production of documents  
3 on April 22nd, 2025.

4 THE COURT: Okay.

5 MR. BERAL: Those --

6 MR. MURPHY: More than that.

7 THE COURT: That is not after this declaration.

8 MR. MURPHY: It's more than that.

9 THE COURT: That doesn't completely help. Can you  
10 give me -- do you have dates, Mr. Murphy?

11 MR. BERAL: We did not receive anything after that.

12 MR. MURPHY: That's not true. That is not true.

13 THE COURT: Okay. So, Mr. Murphy, what dates do  
14 you have?

15 MR. MURPHY: I -- I don't -- the problem is that  
16 Jordan -- I know that -- Jordan Zolliecoffer is actually  
17 studying for the Bar. So, she is just going to --

18 THE COURT: Oh, I see. I see. No, no. I --  
19 (Simultaneous speaking.)

20 THE COURT: I understand.

21 MR. MURPHY: So, I can tell you for the record --  
22 and this is what is important in my opinion is that I have  
23 been -- with your order and with those documents and the  
24 search terms, I have been reviewing at \$800 an hour when I  
25 shouldn't be. You don't have a lawyer at \$800 an hour

1 reviewing documents, but I have been so that I can get it  
2 done. So, that actually is all that I think needs to be said  
3 because the -- the claim that I have -- that willfulness is  
4 obvious, I don't know where you have any evidence of  
5 willfulness in anything --

6 THE COURT: Right.

7 MR. MURPHY: -- (indiscernible).

8 THE COURT: This is literally just to give a sense  
9 of the status of the production. So, I think we --

10 MR. MURPHY: It's going to go --

11 THE COURT: -- will just --

12 MR. MURPHY: -- right up until trial.

13 THE COURT: Let's just leave it there because  
14 there's obviously -- you're saying there were documents  
15 produced after your declaration up until last week.  
16 Defendants are saying they haven't received anything in that  
17 time frame. So, we just leave it there.

18 MR. MURPHY: Yeah.

19 THE COURT: We don't -- we don't have the ability  
20 to get any further clarification of that issue. So, I -- I  
21 think we just leave it there, honestly. I think we just  
22 leave it, and I will go ahead and prepare a report and  
23 recommendation. That's the next step, and I will do that as  
24 soon as possible.

25 All right. Thank you everyone.

1 MR. MALYNN: Your Honor, there's no billing records  
2 or verification of any time reviewing documents before you.

3 MR. MURPHY: That is -- is that what we're doing  
4 now? We're --

5 THE COURT: I'm just -- I'm just going to -- as I  
6 said, I'm going to just leave that as the status. That's all  
7 I was trying to get at in this last set of questions is what  
8 is the status. I'm not going to hold a trial on that issue.  
9 I will note the -- I will note the dispute. I will say, you  
10 know, Plaintiffs represent this. Defendants represent that.  
11 And we will leave it there because I don't want to delay the  
12 report and recommendation on this issue.

13 MR. MURPHY: May I make one -- I just have two  
14 things, only two things to respond to, if I may. This will  
15 be quick.

16 I -- we -- we did not wait when we realized we  
17 missed. And we asked them for depositions, and they didn't  
18 produce them. What we were waiting for was their initial  
19 disclosures because that's how it works. You get your  
20 initial disclosures, and then you write your discovery  
21 because that's what --

22 THE COURT: Yeah, I don't think we need to go back  
23 over this.

24 MR. MURPHY: My -- my request is a big -- I have a  
25 request for -- for your Honor in a big picture. This is

1 actually a -- something for us to consider structurally, and  
2 there are no rules on what we do when we evaluate compliance  
3 with informal discovery conference orders when it's the first  
4 time around, and I think that we should set some standards.  
5 I think there -- you should have to be able to prove that you  
6 -- that you -- there is a good request that would have won a  
7 motion to compel. I think we should -- maybe this is an  
8 opportunity for us to actually do something that provides  
9 guidance because maybe an unknowing person has had a motion  
10 like this, probably knows some -- I don't know. But I think  
11 it would be helpful.

12 THE COURT: Probably not. I mean, I could -- you  
13 know, I've been on the bench 18 years. I don't think I've  
14 had a motion like this based on the first discovery  
15 conference. So, you know, I take your point, but I think  
16 that that is addressed, as far as I can see, in your due  
17 process argument, you know. The issue is what do we do with  
18 these document requests, and --

19 (Simultaneous speaking.)

20 THE COURT: -- the search term ones, which are the  
21 ones that are still outstanding. But I think that that is --  
22 that is part of your due process argument, and I do -- you  
23 know, I -- I understand what you're -- the overall -- I'm  
24 going to take this back for a moment, but I understand what  
25 you're saying about the impact of motions for sanctions on



1 that first order in terms of disrupting how we do things. I  
2 -- I hear what you're saying. I don't think this is the  
3 case. I mean, I don't think that this is the case where I  
4 address that on a big picture because we have a lot of  
5 pressing issues.

6 UNIDENTIFIED SPEAKER: Yes.

7 THE COURT: We may get to that depending on the  
8 outcome of your ex parte application. That's another issue,  
9 but I -- I understand what you're saying. I don't know  
10 whether there's any guidance for this. You know, December 1,  
11 2015 is when Rule 16 was revised to say expressly that courts  
12 could require discovery conferences before the filing of a  
13 motion to compel. What that means is something that we will  
14 need to address. But, as far as I know, I mean, this has not  
15 come up in my experience before this case. So, you know,  
16 maybe it has somewhere else. I -- I'm not aware of it, and I  
17 don't know how we would look for it. So --

18 MR. MALYNN: Your Honor, one point --

19 THE COURT: -- that's that.

20 (Simultaneous speaking.)

21 MR. MALYNN: No. Hold on. My turn, Mr. Murphy.

22 (Simultaneous speaking.)

23 MR. MALYNN: My turn. You raised the due process.  
24 I'd like to respond to the due process --

25 THE COURT: Now, there is a -- there is a due

1 process issue, but I don't know that it's --

2 (Simultaneous speaking.)

3 THE COURT: -- this is the one that we need to  
4 address in this case. The due process issues he's raised, as  
5 I said to you, is the impossibility of compliance. He raised  
6 other ones, but that's obviously the centerpiece of his  
7 declaration.

8 MR. MURPHY: Can I make my last point?

9 MR. MALYNN: I just want to be clear --

10 MR. MURPHY: I have a point.

11 MR. MALYNN: -- that Rule 26 --

12 THE COURT: We need Mr. Malynn first.

13 MR. MALYNN: Rule 26 absolutely defeats -- Rule 26  
14 is designed to protect the party like in -- in Defendants'  
15 shoes from being ambushed at trial and unfair surprise at  
16 trial. And you can't have a due process objection if the  
17 documents that are responsive to a document request and a  
18 court order fall squarely within their case in chief, and  
19 that you can't answer -- you can't resolve their case in  
20 chief without cross examining witnesses on an ambiguous  
21 assignment that does not answer the questions.

22 MR. MURPHY: So, my --

23 THE COURT: All right. Mr. Murphy, you wanted one  
24 last point?

25 MR. MURPHY: Yes. I would just invite the -- your

1 Honor to think about kind of the dynamics that you observed  
2 and kind of the -- the -- the -- what was going on at the  
3 time. You've seen the kind of April 8th through April 15th  
4 stuff. It was -- there was a lot going on. At the same time  
5 as I also am now dealing with three parties that I'm actually  
6 trying to get into the case as quickly as possible to  
7 eventually stipulate to certain things that are now being  
8 told that they're -- they have to accept going to trial.  
9 And, so, I'm dealing with all of this at the same time I'm  
10 dealing with the order, and I -- and I'm trying to do so in a  
11 way that is professional and calm, and I get these  
12 accusations and all this stuff. It's really difficult. It  
13 makes it very hard. So, I -- not only was I not willfully --  
14 I was actually complying with the order under very difficult  
15 circumstances. So --

16 THE COURT: All right. Thank you. We will --

17 MR. BERAL: Your Honor, I'm so sorry. I just want  
18 to address the transcript issue on March 12th.

19 MR. MURPHY: Oh, yeah.

20 MR. BERAL: It's page 97, line seven. It  
21 attributes words to Mr. Malynn. It really is, in fact, Mr.  
22 Murphy who is speaking. I'm wondering if the Court could  
23 enter an order striking Mr. Malynn and adding Mr. Murphy.

24 MR. MURPHY: But where do you -- where do you say  
25 we will --

1 THE COURT: Not before the report and  
2 recommendation, but I can -- I've got to get the recording.  
3 I can't rely on the representation. I have to get the  
4 recording myself and listen to the recording. And, you know,  
5 at some future date we may be able to do that. I'm not sure  
6 that I will be able to do that before I get the report and  
7 recommendation out, but I hear your request.

8 MR. MURPHY: Did -- did --

9 MR. BERAL: Thank you, your Honor.

10 MR. MURPHY: Counsel, could you find where in the  
11 record you said we don't agree to the continued case  
12 management --

13 THE COURT: Well, that he didn't say. He said only  
14 to -- to -- that he wants a change in the transcript as to  
15 who was speaking on --

16 MR. MURPHY: I know, but I --

17 THE COURT: -- line seven. Okay.

18 MR. MURPHY: But he says --

19 MR. MALYNN: Mr. Beral right in that same paragraph  
20 says that he's going to be --

21 MR. BERAL: I'll address Mr. Murphy. Same page,  
22 page 97, when Mr. Murphy is speaking -- it says Mr. Malynn,  
23 but when Mr. Murphy is speaking, I chime in and then say,  
24 Well, I'm not so confident -- when he's speaking about the  
25 CMO being changed, and then the Court came in right after

1 that and said:

2 "Right. So, I have a problem  
3 because I have no authority to change the  
4 cutoff date."

5 What I was going to say is I'm not so confident  
6 that the Court -- that the District Court is going to amend  
7 any deadlines in this case. I was just --

8 MR. MURPHY: And you never said that to me.

9 THE COURT: Right. No, no. I --

10 MR. MURPHY: He didn't say we're not agreeing. I  
11 don't see that.

12 THE COURT: No. You're -- you're talking to to me  
13 about the District Judge -- we don't know what the District  
14 Judge is going to do. I guess we will find out shortly.

15 Okay. All right. I will --

16 UNIDENTIFIED SPEAKER: Right. And on April 4th,  
17 you --

18 THE COURT: -- write down the --

19 UNIDENTIFIED SPEAKER: -- didn't tell anybody --

20 THE COURT: -- request. If you don't see it in the  
21 order, you know, feel free to bring it up again, but I'm  
22 making a note of the request to correct the transcript.

23 ALL: Thank you, your Honor.

24 THE COURT: Okay. All right. Thank you everyone.

25 UNIDENTIFIED SPEAKER: Thank you. Have a great

1 weekend.

2 THE COURT: Thank you. And then we are in recess  
3 until the afternoon calendar. Thank you.

4 (Proceedings concluded.)  
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1 I certify that the foregoing is a correct  
2 transcript from the electronic sound recording of the  
3 proceedings in the above-entitled matter.

4  
5 /s/Jordan Keilty 7/17/2025  
6 Transcriber Date

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8  
9 /s/L.L. Francisco  
10 L.L. Francisco, President  
11 Echo Reporting, Inc.  
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